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#### Uitgifte

Repertory issue <b>2025 / 1556</b>
Date of ruling <b>May 14, 2025</b>
Role number <b>2022/AR/292</b>

Awarded to	Awarded to	Awarded to
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N°

Net recordable

Final Judgment

Art. 773 Eter.W.

## Court of Appeal Brussels

Section Market Court  
19<sup>th</sup> room A

## Judgment

Offered on

Do not register

COVER 01-Q00Q438tl35-0001-0Q71-02-01-1

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**1. INTERACTIVE ADVERTISING BUREAU EUROPE iVIW (IAB Europe)**, as registered in the Crossroads BanL of Enterprises under the number 0812.047.277, with registered office at 1040 BRUSSELS, Place Robert Schuman 11,

*Applicant,*

Represented by Master CRADDOCK Peter Alexander, lawyer with offices at 1050 BRUSSELS, Avenue Louise 54, Master JUDO Frank and Master VANDEKERCKHOVE Kwinten, lawyers with offices at 1000 BRUSSELS, Keizerslaan 3 and Master VAN QUATHEM Kristof, lawyer with offices at 1210 SINT-JOOST-TEN-NODE, Bolwerklaan 21

AGAIN

**2. DATA PROTECTIONINGSAUTOgIT** as registered in the Crossroads Bank of Enterprises under the number 0694.67a.g5o, with registered office at 1000 BRUSSELS, Printing Press Street 35,

*Defendant, hereinafter GBA",*

Represented by Meester ROETS Joos and Meester ROES Timothy, attorney at law with offices in 2018 ANTWERPEN, Oostenstraat 38 bus 201

IN THE PRESENCE OF

**3. AUSLOOS Jef** with Ri}ks register number [REDACTED] residing at [REDACTED]  
[REDACTED]

*Free "willing "(No. 1),*

**4. DEWITTE Pierre**, With Ri}ks registry [REDACTED] residing at [REDACTED]  
[REDACTED]

*V ij "willing "(No. 2),*

**S. RYAN Johnn V**, with national social security number [REDACTED] residing at [REDACTED]  
[REDACTED]

*Voluntary intervening part)"(No. 3),*



6. **FUNDACJA PANOPTYKON**, foundation under Polish law, having its registered office at Orzechowska 4/4, 02-068 WARSCHAU, POLAND, as representative of Ms. Katarzyna Szymielewicz, residing at ul. Filtrowa 64/39, 02-057 WARSCHAU, POLAND,

*Voluntary intervenor (#4),*

7. **STICHTING BITS OF FREEDOM** foundation under Dutch law, having its registered office at Prinseneiland 97hs, 1013 LN AMSTERDAM, NEDERLAND,

*Voluntary Intervention Party" (No. 5),*

8. **LIGUE DES DROITS HUMAIN ASBL**, as registered in the Crossroads Bank for Enterprises under the number 0410.105.805, with registered office at 1000 BRUSSELS, Kogelstraat 22, currently at 1080 BRUSSELS, Leopold II avenue 53,

*Voluntary Intervention Party" (No. 6),*

Represented by Master DEBUSSERE Frederic and Master ROEX Ruben, both lawyers with offices at 1000 BRUSSELS, Rue Joseph Stevens, 7

all voluntarily intervening parties together are hereinafter also referred to as the **"higher"**.

In view the procedural documents :

- the Decision No. 21/2022 in DOS-2019-01377 dated February 2, 2022 of the GBA Disputes Chamber (hereinafter : the **"Challenged les//ss/ng"** or the **"8es/ decision"**) ;
- the petition dated March 4, 2022, by which IAB Europe appeals against aforementioned decision ;
- the petition for voluntary intervention by Mr. Ausloos *et o/ii* as filed at Registry on March 15, 2022 ;
- the interlocutory judgment the Market Court of 7 September 2022 in which it proceeded to (ask) (of) preliminary questions to the Court of Justice of the European Union (hereinafter : **"Ho/ of Justice"**) ;
- the judgment of the Court of Justice of March 7, 2024 (C-604/22) ;
- the petition under Article 748, §2, Judicial Code as filed by IAB Europe on October 11, 2024 ;



- the Market Court's order of Oct. 18, 2024, settling additional conclusion periods ;
- the (third) summary conclusions and bundles of documents as currently submitted by the parties ;
- the oral hearing on Jan. 8, 2025 at which the was taken under advisement for decision on March 19, 2025 ; **the debate on Jan. 8, 2025 was resumed o6 ovo in view of the change in the seat of the Market Court following the interlocutory judgment as pronounced on Sept. 7, 2022 ;**
- the petition to reopen the debates under Article 773(2) Judicial Code as filed by IAB Europe on Feb. 25, 2025 ;
- GBA's written comments on March 7, 2025 ;
- the complainants' written comments on March 7, 2025 ;

The administration of justice proceeded in accordance with the law of June 15, 1935 on the use of language in court proceedings.

## I. Facts and procedural predecessors

1.

IAB **Europe** is a Belgian-based international non-profit association representing companies in the digital advertising and marketing sector at the European level. IAB Europe's members are both companies in this - such as publishers, ecommerce and marketing companies and intermediaries - and national associations, including the national IABs (Interactive Advertising Agencies), which in turn include companies in that sector. IAB *Europe* counts among its members, among others, companies that significant revenues from the sale of advertising space on Internet sites or applications.

IAB Europe has the Transparency & Consent **Framework** hereinafter : "*TCF*"), being a "standard" consisting of guidelines, instructions, technical specifications, protocols and contractual obligations that enable both Internet site or application providers and data brokers or advertising platforms to process personal data of Internet site or application users.

3.

The TCF aims to promote compliance with the AVG when those companies use the so-called **OpenRTB protocol, one of the most widely used protocols uoor Real nice Biddiny**, that is, a system for instantaneous automated

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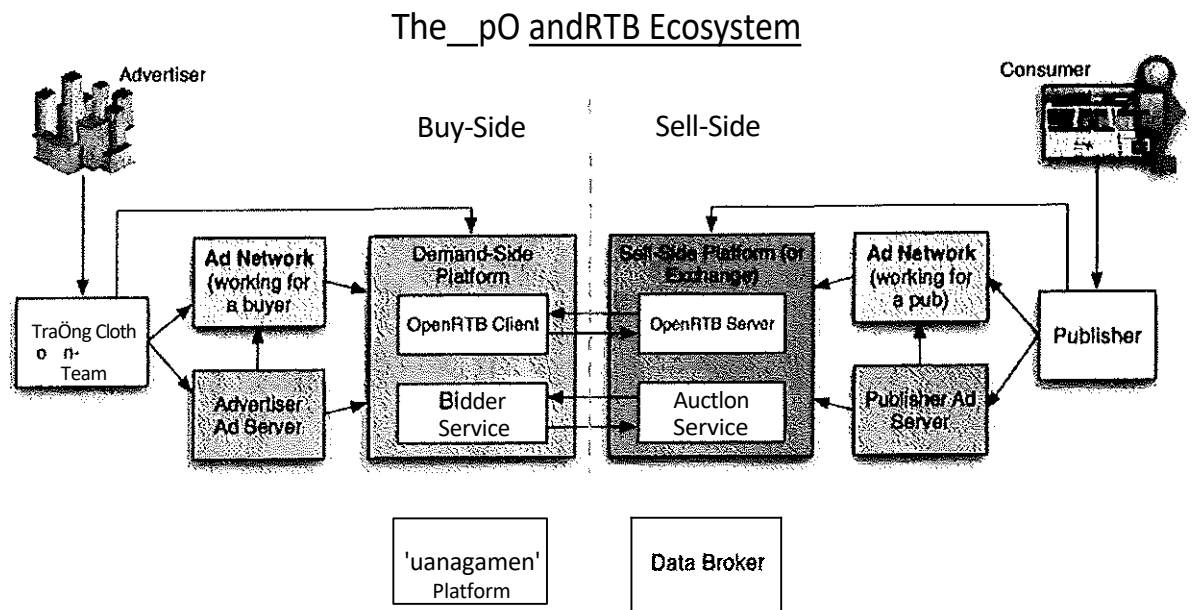
There is an ongoing discussion between parties about what exactly the TCF is : a standard, a norm, a code of conduct, framework, framework, etc.



online auction of user profiles for selling and purchasing advertising space on the Internet (hereinafter : "RTB"). In light of certain practices engaged in by IAB Europe members the context of this system of mass exchange of personal data to user profiles, IAB Europe proposed the TCF as a possible solution to bring that auction system into compliance with the AVG.

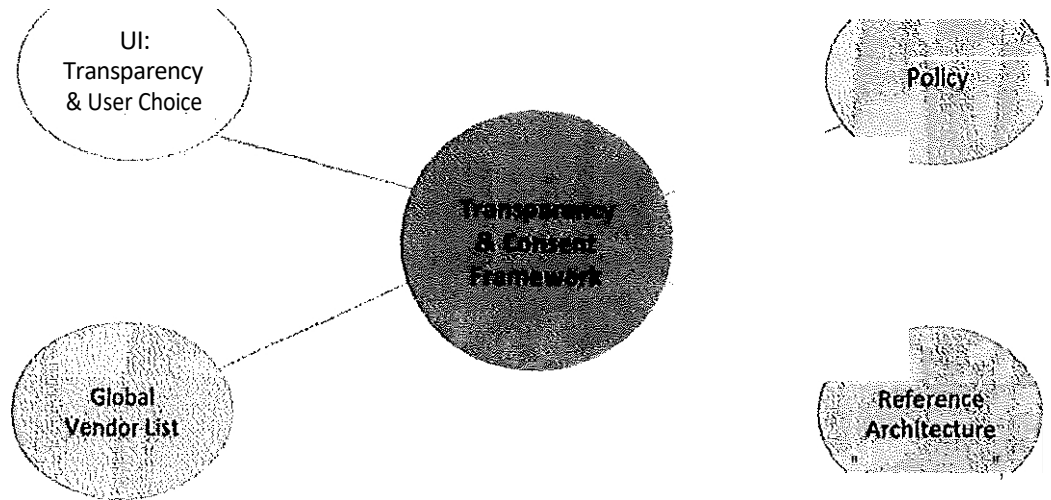
In particular, from a technical standpoint, when a user visits a website or an application that contains advertising space, ad technology companies, including data brokers and advertising platforms, thousands of advertisers, can instantly bid on that advertising space behind the through an automated auction system that uses algorithms in order to display advertising targeted on that advertising space that is specifically tailored to that 's profile.

The Contested Decision shows this schematically' as follows :



<sup>1</sup> Technical analysis report of the Inspectorate, June 4, 2019, GBA piece A24.





z' , . ! : requires central governance

; decentralized governance, fully customizable

4.

However, in order to display such targeted advertising, the consent of that user must first, in principle, be obtained. Accordingly, when the user concerned first visits a particular website or application, a consent management platform - a so-called Consent Management Platform (hereinafter : "*CMP*") - will appear that enables him to grant the provider of the Internet site or application permission to collect and process his personal data for predetermined purposes - such as marketing or advertising in particular - or to share such data with certain providers, as well as to object to various types of processing of such data *of their* sharing on the grounds of the legitimate interests invoked by providers within the meaning of Article 6(1)(f) of the AVG. These personal data relate in particular to the 's location, age, search history and recent purchases.

5.

In this regard, the TCF provides a framework for the processing of personal data on a large scale and facilitates the recording of users' preferences through the CMP. These preferences are then encrypted and *stored* in a letter and character string that IAB Europe calls the Transparency and Consent String (hlerna : "*TC StrIng* "), which is with personal data brokers and advertising platforms participating in the OpenRTB protocol, so that they know what the user has consented to or objected to. The CMP also places a cookie (euconsent-v2) on the users device. In combination, the TC String and the euconsent-v2 cookie can be linked to the user's IP address.



According to IAB Europe, this was changed in the latest version 2.2 of the TCF, is not under here.

6.

The TCF plays a role in the operation of the OpenRTB protocol, as it provides the ability to transcribe preferences in order to communicate them to potential vendors, as well as to achieve various processing purposes, the provision of advertisements. The TCF purportedly aims assure personal data brokers and advertising platforms through the TC String that the AVG has been complied with.

D'e GBA has received is 2019 complaints against IAB Europe (most of the complaints are from other member states, one concerns that of Mr. Pierre Dewitte from Belgium) that concerned the compliance of the TCF with the AVG.

The GBA investigated certain complaints (with an initial report from the inspectorate dated July 13, 2020) and then triggered the cooperation and coherence mechanism to reach a joint decision approved by the (21\*) national supervisory authorities in that mechanism.

8.

Thus, by a decision dated February 2, 2022 (hereinafter : "Ruling"), the GBA Disputes Chamber held that IAB Europe was acting as a data controller with respect to the registration of the consent signal and of the objections and preferences of individual users by means of a TC String, which the GBA Disputes Chamber found to be linked to an identifiable user. In addition, in that decision, the GBA Dispute Chamber ordered IAB Europe, pursuant to Article 100, 4 1, 9", WOG, to bring the *processing* of personal data in the of the TCF into compliance with the AVG, and imposed several corrective measures as well as an administrative fine (EUR 250,000.00) on it.

9.

On March 4, 2022a, IAB Europe filed an appeal with the Markets Court against the Feb. 2, 2022 decision.

10.

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° In fact, there were 28 because verschil |end supervisors from Germany participated.



IAB Europe, meanwhile, was working (in consultation with the GBA) on modifications to the TCF. **The version** under review here is version 2.0. On **May 16, 2023, IAB Europe version 2.2** over which the Market Court currently has no jurisdiction (see further **below**).

11.

Before the Market Court, IAB Europe stated that TC Strings are not personal data to it since IAB Europe itself cannot trace the data back to an individual. It is only the other participants of the system that can do so. For the same reason, IAB Europe would also not be a responsible party as it allegedly does not have access to the .

12.

On Sept. 7, 2022, the Market Court handed down an interlocutory judgment in which, among other things, it referred two preliminary questions to the Court of Justice that can be summarized as follows :

1. Should a TC String be considered personal data?
2. Should IAB Europe be considered a controller? If so, does this also apply to subsequent processing by other organizations?

13.

On March 7, 2024a, the Court of Justice issued a judgment (C-604/22j) (hereinafter : the "*Prejudicial Arrest*").

In it, the Court of Justice ruled as follows :

*"The Court(Fourth Chamber) declares for justice:*

*Article 4(1) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation) must be interpreted as meaning that a letter and character string such as the TC string (Transparency and Consent String), which contains the preferences of an internet user or an application user as regards his consent to the processing of his personal data by internet site or application providers, as well as by personal data brokers and advertising lotteries, constitutes personal data within the meaning of that provision, inasmuch as that string makes it possible to identify the user concerned when it can linked by reasonable means to an identifier such as, in particular, the IP address of that user's device. The fact that a sectoral organization in possession of this string of characters cannot, without external cooperation, access the data held by its members is not*



*within the standard established by it, nor that it" cannot link that string to other data, therefore, does not aon prevent that string from being personal data within the meaning of the aforementioned provision.*

*not prevent that string of characters from being personal data within the meaning of the aforementioned provision.*

*Article 4, paragraph 7, and article 26, paragraph 1, of regulation 2016/679 should be interpreted that:*

*- a sectoral organization which provides its members with a standard drawn up by it which relates to consent the processing of personal data and which, in addition to binding technical rules, also contains rules which' specify in detail how personal data relating to such consent are to be stored and disseminated, is to be regarded as a 'joint controller' within the meaning of those provisions if, having regard to the specific circumstances of the case, it' exercises, for its own purposes, an influence over the relevant processing of personal data and thus determines, together with its members, the purposes and means of that processing. The fact that such a sector organization does not itself have direct access to the personal data processed by its members within that standard does not it' from having the status of joint controller within the meaning of the aforementioned provisions.*

*- the joint veronM'oorde///"k/lead of that industry organization does not automatically extend to subsequent processing of personal data by third parties - such as Internet site or application providers - with respect to users' preferences for the purpose of targeted online advertising."*

14.

After the Prejudicial Judgment, the parties took the case further into state and they were heard by the Market Court on January 8, 2025 after which the case was under advisement.

## II. Contested decision

In its decision of Feb. 2, 2022, the GBA Disputes Chamber ruled as follows :

*FOR THESE REASONS,*

*the Dispute Chamber of the Data Protection Authority, after deliberation, decides to:*



- *Order the defendant, pursuant to Article 1<sup>er</sup>00, § 1, 9° of the WOG, to bring the processing of personal data in the context of the TCF into compliance with the provisions of the AVG by:*
  - a. providing a valid legal basis for the processing and dissemination of users' preferences in context of the TCF, in the form of a TC String and a euconsent-v2 cookie, as well as prohibiting the use of legitimate interests as a basis for the processing<sup>7</sup>9 of personal data by organizations participating in the TCF in its current form, through the terms of use, in accordance with Articles 5.1.a and 6 of the AVG,'*
  - b. implement effective technical and organizational control measures to ensure the integrity and confidentiality of the TC String, in accordance with Articles 5.1.f, 24, 25 and 32 of the AVG;*
  - c. Maintain strict vetting of organizations joining "the TCF to ensure that participating organizations comply with the requirements of the AVG, in accordance with Articles 5.1.f, 24, 25 and 32 AVG;*
  - d. take technical and organizational measures to prevent consent from being checked by default in the CMP interfaces as well as participating vendors from being automatically permitted on the basis of a legitimate interest, in accordance with Articles 24 and 25 AVG;*
  - e. impose on CMPs to adopt a uniform and AVG-compliant approach regarding the information that the latter submit to users, in accordance with Articles 12 to 14 and 24 of the AVG;*
  - f. supplement the current register of processing activities, by including the processing of personal data in the TCF by IA8 (Europe, in accordance with Article 30 of the AVG;*
  - g. Conduct a Data Protection Impact Assessment (DIA) on the processing activities under the TCF and their impact on the processing activities carried out under the OpenRTB system, as well as update this DIA to future versions or modifications to the current version of the TCF, in accordance with Article 35 of the AVG;*
  - h. appoint a data protection officer (DPO) in accordance with Articles 37 to 39 of the AVG.*



*These compliance measures must be implemented within six months of the validation of an action plan by the Belgian Data Protection Authority, which must be submitted to the Litigation Chamber within two months of this decision. Failure to meet the above deadlines will result in a penalty of EUR 5,000 per day, pursuant to Article 100, § 1, 12° of the CPC.*

- *the defendant, pursuant to Article 101 of the WOG, an administrative fine of EUR 250,000 to be imposed.*

*This decision may be appealed " the Market Court, with the Data Protection Authority as respondent, in accordance with Article 108, § 1 of the WOG within a period of thirty days from its notification.*

It is against this decision that the present action is being brought by IAB Europe.

### III. Claims of the parties

IAB Europe asks the Market Court through its synthesis conclusion of November 15, 2024 :

*Declare [IAB Europe's] appeal admissible and well-founded,'*

- *Oien following the Contested Decision No. 21/2022 dated February 2, 2022 in Case No. DOS- 2019-01377:*
  - o *in chief order;*
  - o *In subordinate order, destroy and transfer to the GBA;*
  - o *In most subordinate order, set aside and substitute its own decision provided organization of a consultation process.*
- *Order the GBA and the Complainants to pay the costs of the proceedings, including rolling and court fees, the latter estimated at 1,800.*

Per Synthesis Conclusion dated Sept. 27, 2024, the GBA claims :

*To do justice with full jurisdiction:*

*Declare IAB Europe's substantive grievances unfounded,'*

*Accordingly, declare that IAB Europe has infringed the following provisions: article 5.1.a AVG; article 6 AVG; article 12 AVG; article 13 AVG ; article 14 AVG; article 24 AVG; article 25 AVG; article S.1.f AVG ; article 32 AVG; article 30 AVG,' article 35 AVG; article 37 AVG, and this in the manner as*



*set out in margin number 535 of the challenged decision No. 21/2022 of February 2, 2022 of the GBA Disputes Chamber ;*

*Also declare the procedural grievances of IAB Europe unfounded,' Confirm, consequently, the legality of the contested decision No. 21/2022 of February 2, 2022, and particular of sanctions imposed therein on IAB Europe (contained in the operative part at pp. 138-139);*

*In any, to declare that IAB Europe's claim is unfounded;*

- In any event, order IAB Europe to pay the costs of the proceedings, including the indexed basic amount of the procedural indemnity for non-pecuniary claims.*

On behalf of **voluntarily intervening partijen** or **complainants** :

*To grant the applicants deed of their custodial free "will intervention;*

*Grant the GBA's motion to dismiss IAB Europe's appeal as unfounded.*

#### IV. Resources

On behalf of IAB

Europe :

FIRST GRIEF : The the Dispute Chamber handled the proceedings is contrary to its duties and powers as Data Protection Authority under the WOG and the AVG. It violates the rights of defense of [IAB Europe] and disregards the principle of due diligence as a principle of good administration.

SECOND GRIEF : The Contested Decision is not adequately reasoned.

THIRD GRIEF : The fact that the context of the case has changed completely on appeal violates [IAB Europe's] right to a fair trial as well as the principles of equality and non-discrimination.

FOURTH GRIEF : The the Dispute Chamber decides that TC strings are personal data is insufficiently nuanced and reasoned.

FIVE GRIEF : The Contested Decision incorrectly states that [IAB Europe] processes personal data.



ZFSDE GRfEF : The Contested Decision incorrectly concludes that [IAB Europe] is a data controller of TC Strings.

SEVENTH GRIEF : The Contested Decision erroneously concludes that [IAB Europe] is a joint controller of TC Strings and related data.

EIGHTH GRIEF : The Contested Decision wrongly concludes that [IAB Europe] requires a legal basis and that no legal basis exists for the processing of TC Strings and OpenRTB data.

NINE GRIEF : The Dispute Chamber wrongly concludes that [IAB Europe] is in breach of its duty of transparency.

TENTH *GRIEF* : The Contested *Decision* erroneously concludes that [IAB Europe] its security, integrity and data protection obligations by design and default.

ELFTH GRIEF : [IAB Europe] does not have to conduct a data protection impact assessment.

TWENTY-FIVE GRIEF : [IAB Europe] is not required to appoint a data protection officer.

THIRTEEN GRIEF : [IAB Europe] has no legal obligation facilitate the exercise of data subjects' rights.

FOURTEEN GRIEF : [IAB Europe] is not required to have a register of processing activities and, in any case, it is not incomplete.

On behalf of the GBA :

FIRST Grievance : Your Court lacks jurisdiction to rule again on the points of law raised in the first grievance - Your Court has exhausted its jurisdiction (defense to IAB Europe's first grievance),

SECOND GROUND OF APPEAL: IAB Europe's claim is inadmissible to the extent that it relates to changes made to bicycle *TCP* after the 8-stage decision.



THIRD PARTICULAR REMEDY : The violation of the prudence implicit established in the interlocutory judgment need not to the annulment of the contested decision; at least it can be remedied by Your Court.

FOURTH GROUND OF DEFENSE : The TC Strings do constitute personal data (defense to IAB 's fourth grievance).

FIFTH DEFENSE : In context of the TCF, personal data are processed (defense against the fifth grievance of IAB Europe).

SIXTH GROUND OF Grievance : IAB Europe is a data controller of TC Strings (defense to IAB 's sixth grievance).

SEVENTH GROUND : IAB Europe is a joint data controller for the processing of TC Strings and other data (defense to IAB Europe's seventh grievance).

EIGHTTH GROUND : IAB Europe must have a valid legal basis for processing TC Strings and OpenRTB data but no such legal basis exists (defense to IAB 's eighth grievance).

NEGTH GROUND : IAB Europe breaches its duty of transparency (defense to IAB 's fourteenth grievance).

TtFNDE GROUND : IAB Europe violates its obligations regarding security, integrity and data protection (defense to IAB 's tenth grievance).

ELFTH DEFENSE : Defense against IAB Europe's eleventh to fourteenth grievances: Impact assessment is required (Art. 35 AVG), Data Protection Officer is required (Art. 37 AVG), Register of processing activities is required (Art. 30 AVG) and IAB Europe must facilitate the exercise of data subjects' rights (Arts. 15-22 AVG)

On behalf of **voluntarily intervening parties or complainants:**

FIRST MIDDLE : The *wii* e on which the GBA handled the *proceedings* does not violate its duties and powers as a data protection authority under the WOG and the AVG. It does not violate IAB Europe's rights of defense, nor does it disregard the principle of due diligence. Indeed, the WOG contains both inquisitorial and adversarial proceedings, and the Dispute Chamber may also rely on a complainant's submissions and evidence without having to have all the facts and allegations in a complainant's submissions examined by the Inspectorate. Neither Articles 63 and 94



Neither WOG nor Article 57.1.f AVG require the Dispute Chamber to have all facts and allegations in a complainant's claims examined by the Inspectorate before a decision. Article .1.f AVG has 2even no direct effect, so IAB Europe cannot derive any rights from it. The only relevant test is whether the equality of arms and the rights of defense of the defendant respected. This is the case when (1) the defendant knows, before its final conclusion, which facts and which articles of law have been violated, (2) it is the last party to have been able to submit a written opinion on the matter, so that it the last word, and (3) the Dispute Resolution Chamber bases its decision solely on the pleas and arguments contained in the parties' pleadings and documents and/or the report of the Inspection Service. In that case, the defendant has been able to defend itself against all the factual and legal pleas and arguments contained in the Complainant's Opinion and/or the Inspectorate's Report, and a posteriori judicial review by the Market Court of the decision in relation to the pleas and arguments contained in the 's Opinion is possible. In the present case, those conditions have been , so that the equality of arms and IAB Europe's right of defense been respected. For these reasons, IAB Europe's first grievance is unfounded and IAB Europe's claim to annul the decision of the Disputes Chamber based on that grievance must be dismissed.

SECOND MIDDLE : IAB Europe's allegation that its right to a fair trial and the principles of equality and non-discrimination have been violated because the context of the case "on " before Your Court would have been completely different from the "first instance" before the Dispute Chamber is completely false. After all, in an appeal against a decision of the GBA Dispute Chamber, Your Court does not sit on appeal but at first and only instance. In any event, the context of the case in this appeal is in no way changed from the proceedings before the Dispute Chamber. For these reasons, IAB Europe's third grievance is unfounded and IAB Europe's claim to annul the decision of the Disputes Chamber on that grievance must be dismissed.

THIRD MIDDLE : The Dispute Chamber correctly found that the processing of the TC String constitutes "processing" of "personal data" within the meaning of Articles 4.1 and 4.2 AVG, as clearly confirmed by the Court of Justice. Indeed, the user preferences collected in the TC String are information "about" a natural person who can be identified by online identifiers, in particular the IP address. These personal data are then processed, i.e. collected, structured, organized, disseminated and made available in accordance with the mandatory requirements of the TCF. Accordingly, IAB Europe's claim that the decision of the Dispute Resolution Chamber should be set aside on the grounds that there are no personal data (fourth grievance) or that it does not involve the processing of personal data (IAB 's fifth grievance) must be rejected.



FOURTH MIDDLE : IAB Europe is the controller of the processing of personal data in the . Indeed, the TCF itself, for which IAB Europe expressly declares that it responsible, obliges participants to process personal data for the alleged purpose of bringing the underlying processing of personal data through the OpenRTB auction system in line with the AVG. In doing so, IAB Europe determines the purpose as well as the essential means of processing personal data. Moreover, IAB Europe is jointly responsible for these processing operations of personal data in the TCF with the other participants, namely the CMPs, Publishers and Vendors who intervene, albeit later in the processing chain. Therefore, IAB Europe's claim to annul the decision of the Dispute Resolution Chamber on the grounds that it is not a data controller for the processing of personal data in the TCF (sixth grievance of IAB Europe) or is not a joint controller with the participants in that TCF (seventh grievance of IAB Europe) must be rejected.

FIFTH MIDDLE : IAB Europe's processing operations violate the basic principle of purpose limitation, proportionality and necessity. Indeed, IAB Europe's processing operations are not collected for legitimate purposes and result in the sharing on an immense scale of personal data with all kinds of recipients, without such sharing being in any useful to the processing operations the OpenRTB auction system into compliance with the AVG. Consequently, IAB Europe also violates its accountability and obligation to develop the TCF in a way that ensures data protection by design (violation of Articles 5 and 25 AVG). Accordingly, IAB Europe's claim to annul the decision of the Dispute Resolution Chamber on the grounds that IAB did not breach its obligations regarding data protection by design and default settings (part of IAB 's tenth grievance) must be dismissed.

SIXTH MIDDLE : IAB Europe's processing of personal data in the TCF violates the basic principle of proper, lawful and transparent processing. Indeed, it does not have any legal basis for the processing, has obtained the personal data in misleading way, and does not provide either the complainants or any other data subjects with the legally required information on the personal data processing operations it carries out. (violation of Articles 5, 6, 12, 13 and 14 AVG) Therefore, IAB Europe's claim to annul the decision of the Dispute Resolution Chamber on the grounds that it does not need a legal basis for the processing of personal data in the TCF (eighth grievance of IAB Europe) and on the grounds that it did not violate the obligation of transparency (ninth grievance of IAB Europe) must be rejected.



SEVENTH PLEA ! IAB Europe violates the principle of integrity and confidentiality because it shares personal data within the TCF with an indefinite number of recipients without verifying whether those recipients actually provide the necessary safeguards to protect the personal data from unauthorized or unlawful processing. Accordingly, IAB Europe's claim to annul the decision of the Dispute Resolution Chamber on the grounds that IAB Europe did not breach its obligations of security, integrity and confidentiality (part of IAB 's tenth grievance) must be dismissed.

EIGHTH MIDDLE IAB Europe violates the conditions for transfers of personal data to third countries, as it has set up the TCF in such a way that personal data such as the TC String are systematically transferred to numerous third countries without adequate protection for these transfers. (violation of Article 44 AVG). Therefore, IAB Europe's claim to annul the decision of the Dispute Chamber on the grounds that IAB Europe did not violate its obligations regarding the transfer of personal data to third countries (part of IAB 's tenth grievance), should be rejected.

## V. Legal framework

### General Data Protection Regulation (hereinafter "AVG") :\*

Article 4-7

Article 12-14

Article 24-26

Articles 30, 32, 35 and 37

Article 40

Article 51.1

Article 57.1(a) and

(f) Article 58.1

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\* Regulation [Eur 2016/679 of the European Parliament and of the Council of 27 April 2016 on protection of natural persons with regard to the processing of personal data and on free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation), *Pb.t* 119, May 4, 2016 (hereinafter "AVG").



Article 94

WOG :

Article 58

Article 63, 1°-6°

Article 94, 1°-3°.

Article 96

Article 108

## **VI. Review by the Market Court**

Preliminary - **Petition to reopen** 15.

On Feb. 25, 2025 (when the case was already under consideration at the Market Court), IAB Europe filed a **petition for reopening** debate pursuant to Article 772 Ger.W. filed.

On March 7, 2025, the GBA filed its comments regarding this request. The complainants joined the G8A's comments by email dated March 7, 2025.

Subject of IAB Europe's request to reopen the debate, concerns the publication on February 6, 2025, of the conclusion of Advocate General Spielmann in Case C-413/23 P (European Data Protection Supervisor v. Joint Resolution Board) before the Court of Justice. In his Opinion, the Advocate General analyzes, in particular, the notion of information "concerning" a natural person and the condition of *the* identifiability of the persons concerned.

IAB Europe calls for a reopening of the *debate* based on this paper which it *qualifies as new and* of predominant relevance to the present .

The GBA believes that the request should be denied. It argues that the attorney general's conclusion does not qualify as a newly discovered document or fact, at least that the conclusion does not

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<sup>5</sup> Act Dec. 3, 2017 establishing the Data Protection Authority, *BS* Jan. 10, 2018.



of predominant importance because it cannot alter the Prejudicial Judgment down by the Court of Justice in the present case.

16.

Article 772 Ger.W. states : (NADRUK MARKTENHOF)

*"If, during the course of the deliberations, a different party' discovers a new document or fact of predominant interest, it could', as long as the judgment was not *ui'9espeak*, request the reopening of the debates."*

The application of the above-mentioned legal provision requires the document or fact to new, i.e., it must have been discovered during the discussion, and to be of predominant importance, i.e., it must be of specific utility to the . Thus, the document or fact must not have been known to the requesting party or could have been known before the *conclusion* of hef .

17.

*In the present case*, the considers that the Advocate General's Opinion does indeed qualify as new. Indeed, the opinion was published only after the case had already been for some four weeks. Nonetheless, the Court is not convinced that the content of the Advocate General's Opinion, however interesting, is of predominant importance.

That the notion of "personal data" *is a* relative concept is stated, inter alia, in margin number 26 of the AVG. In , this margin number clarifies that, as far as the notion of identifiability of a natural person is concerned, one must take into account all means that can reasonably be expected to be used by the controller or by another person to directly or indirectly identify the natural person. The Court of Justice also made reference to this reasonableness/relativity test in the Prejudicial Judgment of March 7, 2024, placing the final assessment in this regard with the Market Court.

Moreover, in the conclusion in question, the Advocate General *himself expressly\** makes the link to the Court of 's Preliminary Ruling of March 7, 2024 and reasons that case did involve personal data because IAB Europe had reasonable means of indirectly accessing the identifying data.

18.

The Market Court does not consider the document to be of predominant importance and the request to reopen the debates is therefore denied for that reason.

PROCEDURAL GRIEVANCES OF IAB EUROPE FOLLOWING INTERLOCUTORY AND PRELIMINARY RULING

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° Footnote 25 of the Opinion of February 6, 2025 Attorney General Spielmann, in Case C-413/23.



**FIRST and SECOND GRIEF IAB Europe : The way the Dispute Chamber** dealt with the proceedings is contrary to its **duties and powers** as **Gegevensbeschermingsautoriteit** under the WOG and the AVG. It violates the rights of defense of (IAB Europe) and disregards the due diligence as a **principle of good administration** and The Contested **Decision is not** adequately motivated.

#### Positions of parties

According to IAB Europe, the way the Dispute Chamber handled the proceedings is contrary to its duties and powers as Data Protection Authority under the WOG and the AVG, violates IAB Europe's rights of defense and disregards the principle of due diligence as a principle of good administration.

Invariably, according to **IAB Europe**, the Dispute Chamber failed to provide or provide adequate reasons for the Contested Decision. Among other things, IAB Europe refers to the interlocutory judgment of September 7, 2022 (no explanation of the one-stop shop rule).

The GBA posits that the Market Court has no jurisdiction to rule again on these grievances because it has already ruled on them in the interlocutory judgment of September 7, 2022. It also argues that the established violation of the duty of care and the duty to state reasons should not lead to the annulment of the Contested Decision.

Complainants                      GBA.

#### Judgment of the Market

##### Court 19.

The first and second grievances from IAB Europe's November 15, 2024 summary judgment, come correspond respectively to IAB Europe's seventh and eighth grievances assessed by the Court in the interlocutory judgment of Sept. 7, 2022.

In other words, the interlocutory judgment has already ruled on IAB Europe's due diligence plea. Specifically, the Interlocutory Judgment found that the Contested Decision itself does not make sufficiently clear on the basis of which factual findings *it is considered* that TC Strings are personal data within the meaning of Article 4(1) AVG. The Court held that the Disputes Chamber, by processing, with respect to the TC String's qualification, the Complainants' additional complaints and allegations, without more, after the hearing, did not conduct a proper investigation and fact-finding.

Further, in the interlocutory judgment, the Court held that the Contested Decision was not adequately reasoned insofar as it considers the GBA to be the leading appropriate authority.



20.

On the other hand, the interlocutory judgment considers that IAB Europe's rights of defense have been respected and rejects the violation of Articles 57(1) and 58(1) AVG and of Article 94 WOG. Indeed, the judgment emphasizes that the Dispute Chamber did have the right to choose to investigate the additional facts or complaints itself. The Inspectorate did not have to be .

It follows that the Court has already done justice on the points of law mentioned in the first two grievances and to that has exhausted its jurisdiction. Therefore, the Court lacks jurisdiction to rule again on these points of law.

2L

By contrast, the interlocutory judgment has not yet ruled on the legal consequences to be attached to the procedural pleas found to be partially well-founded. The Court has not yet assessed whether and to what extent the partially founded procedural pleas should lead to annulment or reform of the Contested Decision. However, in view of the request of all parties *"to assess the substance of the present case"*, the Court has decided in its interlocutory judgment to proceed to an assessment of the substance of the pending . It is precisely to facilitate this exercise that the interlocutory judgment referred several questions of interpretation to the Court of Justice.

In the operative part of the present Final Judgment, the Court sets aside the Contested Decision for the above-mentioned procedural reasons insofar as the Disputes Chamber finds (without conclusive investigation and fact-finding in this regard) that TC Strings are personal data within the meaning of Article 4, point 1, AVG and insofar as it considers the GBA to be the leading supervisory authority without specific reasoning in the Contested Decision in that .

22.

The legislative history of Article 108, § 1, of the Act of December 3, 2017 establishing the Data Protection Authority shows that the Market Court adjudicates with full jurisdiction in the context of an appeal against a decision of the Plaintiff's Litigation Chamber.

This implies that, within the limits of the devolutive effect of the appeal, the Markets Court will rule on all questions of law and fact as they were by the Data Protection Authority's Disputes Chamber.'

Hee Market Court can thus in principle substitute itself entirely the Data Protection Authority in its assessment. It cannot review the decision appealed against.

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See Cass. Jan. 10, 2025, C.22.0110.N, concl. S. Ravyse, at [www.ubelgium.be](#).



only destroy, but also reform. It can then make a decision that supersedes the challenged decision.

23.

Now, using its full jurisdiction and *taking* into account the 's Prejudicial Judgment, *let* the Court itself assess whether the elements in the administrative file can support the qualification of the TC Strings as personal data, the existence of at least one cross-border processing *and the* appointment *of* the GBA *as* the leading supervisory authority.

24.

It should be noted that the Market Court is in no way obliged by the AVG or under national to organize a European consultation procedure as IAB Europe wrongly posits in (the body ) its conclusion.

As to the characterization of TC Strings as personal data, the Market Court refers to what follows in assessing IAB 's fourth grievance.

The existence of at least one cross-border processing and the appointment of the GBA as the lead supervisory authority are assessed by the Market Court as part of the analysis of IAB 's fifth grievance.

**THIRD GRIFF IAB Europe** : The fact that the context of the case has changed completely on violates [IAB Europe's] right to a **fair trial** as well as the principle of equality and non-discrimination.

S and u and an a and

According to IAB Europe, the GBA deprived it of an effective remedy and violated its right to dissent. IAB Europe says it must "*defend itself for the first time on appeal against a completely changed context*". She argues that any party but herself is entitled to her case *fully* tried twice. She says there are violations of both Article 6 ECHR and Articles 10 and 11 of the Constitution.

According to the GBA, it is evident that the changes allegedly made by IAB Europe to the TCF not relevant in assessing the legality of the Contested Decision. "*Indeed, as a general rule, the legality of a decision must be assessed at the time it was made*" and

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<sup>1</sup> See Cass. Dec. 12, 2019, C.18.0250.N, cl. R. Mortier, at [www.uportal.be](http://www.uportal.be).



*"based on the data as they were available at the time (they) were taken."* Just as IAB Europe emphasizes that no admission to its detriment can be inferred from the adjustments made to the TCF, neither can it be inferred from these adjustments that the Dispute Resolution Chamber's assessment of the TCF (as it was before the Dispute Resolution Chamber at the *time of the Contested 8 Decision*) *would* wrong.

### **Judgment of the Market Court**

25.

In an appeal against a decision of the Disputes Chamber of the GBA, the Court does not sit in appeal but in first and only instance (Article 108 CPC). In this sense, the objective contentiousness with which the Market Court was charged differs from the subjective contentiousness handled by the "ordinary" courts appeal.

26.

In any event, the context of the case in this story is in no way changed from the proceedings before the Dispute Chamber. The Court reviews the TCF not in the amended version but in the version submitted to the Dispute Chamber. The Market Court does not even have jurisdiction over TCF version 2.2, because it is caught on the Contested Decision and that deals only with TCF version 2.0.

The notion of full jurisdiction arising from Article 108 WOG coupled with Article 78 AVG is v'ilar from the notion concerning the devolutive power of appeal (Article 1068 Ger. W.) and both cannot be used interchangeably. In light of the broad powers available to a supervisory authority, according to the ECJ, the requirement of effective judicial protection is not met if the decisions of a supervisory authority are only subject to limited judicial *Zouden* review. Therefore, the Court considers that such a decision must be subject to full judicial review. The essence of that full judicial review is that the parties can, within the limits of the devolutive effect of the appeal, put forward a comprehensive defense before the Market Court, also with respect to facts dTe were not or insufficiently addressed in the Contested Decision (obviously to the extent that these facts *predate* the Contested Decision itself).

27.

Therefore, no violation of Article 6 ECHR or Articles 10 and 11 of the Constitution is demonstrated.

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?'ic' Dnde more ECJ December 7, 2023, C-26/22 and C- 64/22, UF and AB v. Tand Hessen (SCHUFA), marg. 53- 59.



For these reasons, /A8 Europe's third grievance is unfounded and fA8 Europe's claim to set aside the Contested Decision of the Dispute Chamber based on that grievance must be dismissed.

GRIEVANCES OF IAB EUROPE REGARDING THE MERITS OF THE CASE

Prior

28.

1. In the case before it, the Market Court was called upon by the GBA and the complainants to rule on both the substantive and procedural issues in dispute between the parties, and this, in order to ensure the full and effective effect of the AVG in the internal legal order. In the interlocutory judgment, the Market Court held that the Contested Decision certain (purely) procedural defects. In order to the full and effective effect of the AVG in the internal legal order, it seems appropriate - also in view of the Preliminary Judgment of the Court of Justice - that the Market Court should also rule on merits of the infringements of the AVG withheld by the Litigation Chamber (at least the extent that those merits are disputed by IAB Europe and thus are the subject of the opposing debate before the Market Court). In doing so, the Market Court systematically the correctness of the material grounds of the Contested Decision, following Prejudicial Judgment, and completes or replaces them where necessary or useful.
2. Article 5.2 AVG states that the data controller must be able to demonstrate compliance with the principles of the AVG (accountability). To the extent that IAB Europe qualifies as a data controller (see below), it bears the burden of proving compliance with the AVG and cannot invoke Article 870 Ger. W. to shift that burden of proof to the GBA or the complainants.

**FOURTH and FIVE GRIEF IAB Europe : IAB Europe seeks the annulment of the Contested Decision of the Dispute Chamber on the grounds that it does not involve personal data** (fourth grievance) or that it does not involve **the processing of personal data** (fifth grievance)

*Fourth and vijfth defenses GBA, third plea complainants.*

Stand unte va a e

In its fourth grievance, **IAB Europe** argues that the Contested Decision violates Article 4(1) AVG and the substantive duty to state reasons by qualifying the TC String as personal data within the meaning of the aforementioned provision.

In its fifth grievance, IAB Europe argues that the Contested Decision failed to demonstrate that IAB Europe itself processes personal data within the meaning of Article 4(2) AVG. Merely demonstrating



That *"in the context of the TCF"* personal data are processed is not sufficient, according to IAB Europe. Until it is shown that IAB Europe itself processes TC Strings, it could not be considered a data controller, nor could the TC Strings be personal data.

The GBA, supported in this by the complainants, argues that the TC String personal data and that the TC String is processed as it captures a user's preferences through automated processes (even if the user refuses everything) and IAB determines its storage and dissemination.

#### Judgment of the Market Court

##### *0th Contested Decision*

29.

The Contested Decision finds (margin numbers 302 et seq.):

*"302. Although the Litigation Chamber understands that it has not been conclusively established that the TC String, due to the limited metadata and values contained therein, in itself allows for direct identification of the user, the Litigation Chamber finds that when the consent pop-up is requested by means of a script from a server managed by the CMP, it inevitably also processes the user's IP address, which is explicitly classified as personal data in the AVG.*

*303. Indeed, peripheral number 30 AVG provides that notuurliij individuals can be linked to online identi/icotors through their devices, applications, tools and protocols, such as Internet Protoco/ (IP) addresses, identification cookies, or other identifiers such as radio frequency identifier logs. This can leave traces that, especially when' combined with unique identifiers and information received by the servers, can be used to create profiles of natural persons and recognize notational persons.*

*304. Once a CMP stores or reads the TC String on a user's device using a euconsent-v2 cookie, consent or objection to processing based on a legitimate interest, as well as that user's preferences, can be linked to the IP address of the user's device. In other words, CMPs have the technical means to IP addresses (as indicated in their pop-up) and combine all information related to an identifiable person. The ability to combine the TC String and the IP address means that this is information from an identifiable user.*



305. Moreover, an identification of the user is possible by linking to other data that can be by participating organizations within the TCF, but also in the context of OpenRTB. The Dispute Chamber underlines in that respect that to are not any parties, but participating organizations - CMPs and vendors- which, examined in more detail below, are required to disclose information with which they can identify users, to communicate to the defendant, upon its simple request.

306. Accordingly, the Dispute Chamber finds that the Respondent has reasonable resources at its disposal that it can employ with respect to registered organizations participating in the TCF, which enable the Respondent to directly or indirectly identify the natural person behind a TC String.

307. The Litigation Chamber also understands that the TCF inherently aims and therefore storing a combination of preferences from each user in the form of a unique string in the TC String, in order to communicate these preferences to a large number of adtech vendors.

308. Indeed, the Dispute Chamber finds, based on the inspection reports, that the adtech vendors as well as other participants within the broader OpenRTB ecosystem lend the signal stored in a TC String to determine whether they' have the required legal basis for processing a users personal data for the purposes to which the user has consented.

309. In this regard, the Litigation Chamber emphasizes that it is sufficient that certain information is used in order to individualize a natural person (single out) to be able speak of personal data. Also, the purpose of the TC String, in particular the purpose of capturing the preferences of a well-defined user, leads de facto to the TC String being considered as personal data."

#### *The Prejudicial Judgment*

30.

The Court of Justice considers as follows :

"42. In the present case" noted that a letter and character string such as the TC String contains the preferences of an Internet user or a user of an application regarding whether his consent to the processing by third parties of his personal data or of data about the objection he may have made to the processing of his personal data for an alleged legitimate interest as referred to in Article 6(1)(f) AVG.

43 *Even if a TC String would not by itself contain data by means of which the data subject can be directly identified, it contains to begin with the personal preferences of a specific user with regard to his consent to the processing of his personal data, where it could be information "about a (...) natural " within the meaning of Article 4, point 1, AVG.*

44 *In addition, it is also certain that linking the information contained in a TC String to an identifier such as, in particular, the IP address of the device of the user in question can make it possible to draw up a profile of this user and to actually identify the person to whom that information specifically refers.*

45 *Since a user can be identified by linking a letter and character string such as the T6 String with additional data, such as, in particular, the IP address of that user's device or other identifiers, it should be considered that the TC String contains information about an identifiable user and thus personal data within the meaning of Article 4(1) AVG, which is by marginal 30 of the AVG, which explicitly refers to such a situation.*

46 *This interpretation is not altered by the mere circumstance that IAB Europe could not itself link the TC String to the IP address of a subscriber's device and has no direct access to the data processed within the TCF by its members.*

4F *Indeed, as the case law recalled in paragraph 40 of this judgment shows, that circumstance "does not prevent a TC String from being considered as "personal data "within the meaning of Article 4(1) AVG.*

48 *Moreover, it appears from the file in the Court's possession - and in particular from the decision of February 2, 2022 - that the members of IAB Europe are obliged to provide that organization, at request, with all the information that would enable it to identify users whose data are stored in a TC String.*

49 *Thus, subject to the verifications to be made out by the verwijzende rechter In this regard, IAB Europe - thanks to the information to be provided to it by its members and other organizations participating in the TCF - appears to the reasonable means, to in marginal number 26 of the AVG, to identify a given natural person by means a TC String.*



50 *It follows from the foregoing that a TC String constitutes personal data within the meaning of Article 4(1) AVG. It is irrelevant in this regard that without external cooperation, which it may require, such a sector organization does not have access to the data that its members vert+er within the standard it has established, nor can it link the TC String to other identifiers such as, in particular, the IP address of a 's device."*

*Review by the Market Court*

### **TC String as personal data**

31.

The definition of personal data in Article 4(1) AVG includes essentially four elements, which are cumulatively important for judging whether or not certain information should be considered personal data. These are (i) any information (ii) about (iii) an identified or identifiable (iv) natural ."

32.

In addition, a person is considered identifiable if he or she *can be "identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more elements characterizing the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person."* Fringe number 30 of the AVG clarifies that natural persons can also be linked to online identifiers, as found in IP addresses and identification cookies.

33.

The first condition for talking about personal data is "information." Data are described as objective facts. Once they acquire meaning, information arises. The nature and content of the information is . The form of the information or the medium is also . Some data have a dual nature in that they both provide information about a person and allow a natural person to be identified.

34.

The second condition states that information must concern or be about a natural person. The GBA implicitly states, followed therein by other supervisors, in the aforementioned margin number 309 of the Contested Decision, that in order to speak information concerning a natural , (only) one of the three following elements

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" DE BOT, O., *The application of the General Data Protection Regulation in the Belgian context. Commentary on the AVG, the Data Protection Act, and the /2edata besclermingsourority Act*, WoltersKluwer, 2020, p. 100, margin number 273.



must be present : content data (information about a person) as personal data, purpose data (data used with the purpose of assessing a person) as personal data or result data (data that have potential effects on a person's rights or interests) as personal data. This position of the supervisors is not followed by everyone in the legal doctrine, and hence the importance of the Prejudicial Judgment."

35.

This second condition therefore plays an important role when the Dispute Chamber or the Market Court has to adjudicate (relatively) new technologies such as TC Strings. Sometimes, as in the present case, information (contained in the data) is in the form of a character and letter string and not persons. In that case, the information is deemed to be only indirectly persons.

36.

The third condition states that the protection of the AVG applies only to natural persons or human beings.

37.

Finally, the fourth condition states that the information must relate to a natural person who is identified or identifiable (directly or indirectly).

#### **Application in roncrero**

38.

As noted above, the Market Court is exercising its full jurisdiction here.

39.

In essence, the TCF is designed to ensure that all parties involved in the digital advertising chain - from advertisers to publishers - comply with the rules of the AVG. It allows users to give or withhold their consent to the processing their personal data for advertising purposes. These preferences are collected and recorded in a so-called "*TC String*," which is then used within the RTB system.

40.

It cannot be reasonably disputed by any of the data subjects that a TC String is information and that a natural person is or may be involved at least indirectly.

41.

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" DE BOT, D., *The application of the General Data Protection Regulation in the 8th/gisc/le context. Comments on the AVG, the Data Protection Act and the Data Beschermingsautoriteit Act*, WoltersKluwer, 2020, p. 105 marg. 284.



Remains to examine whether it is information concerning a natural person (second condition) and whether that natural person is identified or identifiable (fourth condition).

42.

The Preliminary Ruling itself clarifies the fulfilment of the second condition in paragraphs 43 to 48 of the Preliminary Ruling, quoted above, which explicitly confirm that the TC String *"contains the personal preferences of a specific user in relation to his consent to the processing of his personal data, where it is information 'relating to a (...) natural person' within the meaning of Article 4(1) of the AVG."*

43.

**Also with regard to the fourth condition, the Prejudice/Arresc provides interpretation in the aforementioned marginal numbers.**

44.

However, in order to finally decide whether a TC String is personal data within the meaning of Article 4(1) of the AVG, it is necessary, in accordance with the Prejudice Judgment, *u*for the Market Court to examine whether IAB Europe has **reasonable** means to **identify** a particular natural person by means of a TC String.

45.

As already held *above*, the hereby exercises its full jurisdiction.

46.

The Market Court considered as follows.

The report of the inspection service (document A133 administrative file GBA : EN version of the report) states :<sup>12</sup>

*"IAB Europe developed a Transparency and Consent (Exhibits Nos. 30 to 36 and No. 38 of file DOS-2019-01377) in which it imposes binding rules on participating organizations, whose membership is also subject to a financial contribution. These binding rules concern the processing of personal data in the context of online advertising. IAB Europe exercises a form of control in this ecosystem and refers to itself as a "Managing Organization."*

*More concretely.*

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<sup>12</sup> It is important to note that the acronym "MO" is an abbreviation for the English Managing Organization or management organization and in this context IAB Europe meant by it.



- IAB Europe determines binding lists of processing purposes by referring to "Purposes and Features Definitions" and "Purpose and Feature Definitions" in an "Appendix A" [Appendix A] (Exhibits Nos. 32 and 38 of File DOS-2019 01377, respectively);
- IAB Europe determines the w)ze of processing by imposing "Policies" (policies) on "CMPs" (Consent Management platforms) (Consent Management Platform hereafter olgeyort cMPJ , "Vendors" (sellers) and "Publishers" (publishers) participating in the Transparency and Consent Framework (Exhibits Nos. 32 and 38 of file DOS-2019-01377);
- IAB Europe imposes binding rules on participating through its document "Terms and Conditione for the IAB Europe Transparency & Consent Framework" "Terms and Conditions"). Oit document contains, inter aliaon blad sides 5 to 6 the obligations for participants ("Your Obligations") and on pages 6 to 7 an obligation to make a financial contribution to the ecosystem ("Payment") (Betalfng ) Exhibit No. 33 of Dossier DOS-2019-01377)."

In IAB Europe's "Current tcf policy" (piece A038 from the GBA administrative file), the Articles 8 and 15 the following : (ADDRESS MARKTENHOF)

*"B. Record keeping*

1. A CMP will maintain records of consent, as required under Framework Policies and the Specification, and will provide the MO access to such records upon request without undue delay."

Translated as :

*"8. Registration*

1. A CMP maintains records of consent, as required by the Framework and the Specificatfe, and gives the MO access to these records upon request without undue vertrap!np."

*"J5. Accountability*

1. The MO may adopt procedures for periodically reviewing and verifying a Vendor's compliance with Framework Policies. A Vendor will provide, without undue delay, any information reasonably requested by the MO to verify compliance.
2. The MO may suspend a Vendor from participation in the Framework for its failure to comply with Framework Policies until the Vendor comes into full compliance and demonstrates its intention and ability to remain so. The MO may expel a Vendor from



*participation in the Framework for violations of Framework Policies that are willful and/or severe."*

Translated as :

*"15. Accountability*

*1. The MO may establish procedures for periodically assessing and verifying a Vendor's with the Framework. **A Vendor shall provide without undue delay any in/ormot/e reasonably requested by the Mo to verify compliance le.***

*2. 2. The MO may suspend a Vendor from participation in the Framework for failure to comply with the Framework until the Vendor fully complies with the Framework and demonstrates its intent and ability to with the Framework.*

*The MO may exclude a Vendor from participation in the Framework in the event of' willful and/or serious violations of the Framework."*

The Terms conditions of IAB Europe (piece A033 from the administrative file GBA) states in article 7 : (ADDRESS MARK TENHOF)

*"7) Our Obllgations*

*b) tou agree that we and IAB Tech Lab may access, store and use any information that you provide in connection with your participation in the Framework in accordance with the terms of our Privacy Policy at <https://www.iabeurope.eu/privacy-policy/>, as updated from time to time."*

Translated as :

*"7) Our obligations*

*(b) You agree that we'and IAB Tech Lab may **access, store and use any Information d'you provide** in connection with your participation in the Framework in accordance with the terms of our Privacy Policy at [https.'//www.iabeurope.eu/privacy-policy/](https://www.iabeurope.eu/privacy-policy/), as updated from time to time."*

47.

It is indisputable from all the aforementioned articles that, thanks to the information that its members and other organizations participating in the TCF are required to provide to it, IAB Europe has at its disposal resources that it and/or the participating organizations can reasonably be expected to use (or could use) to (in)directly identify a natural .



48,

However, the fact that IAB Europe itself would not have the reasonable means to proceed with Identification because it cannot make the link between a TC String and the IP address and would not have direct access to the personal data, is in itself irrelevant. This is explicitly confirmed by the Court of Justice in margin numbers 46 and 47 of the Prejudicial Judgment as quoted above.

It follows from the foregoing that a TC String is personal data within the meaning of Article 4(1) AVG.

**Is there any processing of personal data ?**

49.

Article 4(2), AVG defines a *"processing operation"* as *"any operation or set of operations which is upon personal data or sets of personal data, whether or not by automatic means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction."*

50.

The TC Strings, once created, are then processed, i.e. collected, structured, ordered, distributed and made available in accordance with the binding rules of the TCF. IAB Europe as management organization and central figure in the digital ecosystem thereby determines the storage and dissemination of the TC String.

The Contested Decision, by establishing in margin numbers 317-321 that at least the *vendors* collect, process, store and share personal data - what Article 4(2) AVG calls *"providing by means of transmission"* - has legally justified the processing of personal data within the of the *aforementioned* provision.

According to the TCF Technical Specifications, sharing the TC String with CMPs is done in two ways :

- a. storing the TC String in a shared *global consent* cookie on the *consensu.org internet domain* of IAB Europe or
- b. storing *the* TC String in a *storage system* chosen by the CMP *if it is a* service-specific consent signal concerns.



In both cases, personal data are processed. Of course, IAB Europe's intervention in the processing was all the more consequential in the shared *global consent* cookie hypothesis. Indeed, that shared *global consent cookie in which* the TC String is stored refers to the consensu.org domain from which CMPs can access and update the gedee(the TC String. This domain was registered and managed by IAB Europe.

Both this causing the TC String to be stored in a shared cookie, and making the TC String available to TCF participants via this central consensu.org domain, were clearly processing of personal data within the meaning of the AVG.

52.

Regardless of *the g/oja/* consent cookie and the consensu.org domain, there is processing of personal data in the TCF managed by IAB Europe :

- O user preferences are collected through a CMP and the CMP also gets the 's IP address *at* that time ;
- O user preferences are structured and ordered in a TC String ;
- O the TC String is retained, distributed and made available to participants in the TCF.

53.

Contrary to what IAB Europe states, this is not merely a theoretical conclusion, but a concrete conclusion based documents (see, among others, documents C1 to C4 of the complainants : bailiff's and/or notary's records of processing operations<sup>19</sup>) . Nor is it merely a "*standard*" that would not in itself constitute processing as IAB Europe argues: the TCF is a framework that makes certain processing happen in a certain way, otherwise the would not work at all. Obviously, the participants themselves choose whether they want to participate, but as soon as they join, they are obliged to process the personal data (the user preferences and corresponding identifiers) within the . After all, the TCF includes, as

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<sup>19</sup> Process report of bailiff Hendrikus Oude Elferink dated February 15, 2021 with findings of Jef Ausloos (official and unofficial version), Process report of bailiff *Jordane Pirard dated February 16 lebtuari* 2021 with findings of Pierre Dewitte (official and unofficial version), Affidavit [*"affidavif "*] dated February 12, 2021 with findings of Johnny Ryan (official and unofficial version), Notarized deed notary Anna Rutowicz dated February 3, 2021 with findings of Katarzyna Szymielewicz (of(icial version and free English translation).



already mentioned, also have a mandatory character, whereby the rules and regulations contained therein are additionally by IAB Europe.

**Is there any cross-border processing of personal data'**

54.

As announced above, the Market Court also exercises full jurisdiction here :

Data flows to countries within the European Union do occur within the system described above (TCF). This appears from paragraphs 5 to 11 of the Contested Decision and the documents from the administrative file as submitted by the GBA. However, it does not appear from the documents submitted to the Court that, as far as IAB Europe is concerned, there is a transfer to third countries within the meaning of Article 44 AVG.

Account must therefore be taken of Article 1, point 3, AVG, which provides that the free movement of personal data in the Union may neither be restricted nor prohibited for reasons connected with the protection of natural persons with regard to the processing of personal data.

Article 423) AVG clarifies the concept of cross-border processing in following terms :

*"(a) processing of personal data in the course of the activities of establishments in more than one Member State of a controller or of a processor in the Union which is in more than one Member State; or (b) processing of personal data in the of the activities of one establishment of a controller or of a processor in the Union which materially affects or is likely to materially affect data subjects in more than one Member State."*

The GBA as the lead **supervisory authority**

As announced above, the Market Court also exercises full jurisdiction here : Peripheral Number 11 of

the Contested Decision states :

*"The defendant has its sole registered office in Belgium, but its activities have a significant impact on interested parties in several Member States, including the complainants in Ireland, Poland and the Netherlands, as well as in Belgium." The Dispute Chamber draws its jurisdiction on a combined reading of Articles 56 and 4(23)(b) of the GBA. The GBA was caught by the Polish, Dutch and Irish data protection authorities following a*



*complaint of the complainants to' them, in accordance with Article 77.1 AVG. It declares that it the leading supervisory autorireir (orticle 60 AVG)."*

56.

This summary justification should be supplemented by the following findings from the inspection report (Exhibit A133 GBA) showing (page 8 and following) that the GBA can only act as the *lead* supervisory authority with respect to IAB Europe<sup>10</sup> and limited for the TCF.

The Inspectorate justifies this on pages 10 and 11 of its report as follows : (EMPHASIS MARKETSHOF)

*The registered office of IAB Europe is located Place Robert Schuman No. 11 in 1040 Brussels (Belgium) and is registered with" the Crossroads Bank for Enterprises under No. 0812.04 7.2776, location confirmed in its "privacy policy" (piece No. 41 of file DOS-2019-01377). According to Article S6 § 1 of the AVG, the GBA is therefore the main supervisory authority for the Transparency and Framework.*

*IAB Europe is the data controller for the Transparency and Consent Framework, as described above.*

*IAB Europe developed a Transparency and Consent Framework (Exhibits Nos. 30 to 36 and No. 38 on file DOS-2019-01377) in which it' imposes binding rules on participating organizations, whose membership also subject to a financial . These binding rules relate to the processing of personal data in the context of online advertising. IAB Europe oe/ent out a uorm of confrole In this ecosystem and venvysr to itself as "Managing Organizaf/on" (managing organization).*

The Market Court concurred with the above findings from the inspection report. Given

all that precedes, *both IAB's fourth and fifth grievances are unfounded.*

SIXTH and SEVENTH GRIEF IAB Europe : The Contested Decision erroneously concludes that IAB Europe is a processor of TC Strings (§§322-361) and The Contested Decision erroneously concludes that IAB Europe is a joint processor of **TC Strings and** related data (§§262-400).

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<sup>14</sup> The Inspectorate notes that as far as *Authorized Buyers* are concerned, the GBA is not the lead supervisory authority but rather the Irish regulator and that *IAB Tech tab* of the United States not a processor for RNB.



*Sixth and seventh defenses GBA, fourth plea complaining.*

**sSvattinannten** da e

Through its sixth grievance, **IAB Europe** challenges the Dispute Resolution Chambers characterization of IAB Europe as a data controller with respect to personal data that might be processed by TCF participants. IAB Europe argues that even if it were deemed to have some degree of control over the resources, that does not necessarily make it a data controller.

Regarding its seventh grievance, IAB Europe claims that the reasoning of the Contested Decision is unclear and incoherent and that the Dispute Resolution Chamber fails to clearly establish who is a (joint) controller or processor for which processing operations. The assessment of IAB Europe's joint (joint) processing responsibility with the CMPs, publishers and vendors is seriously flawed, according to IAB Europe.

Both cases, according to IAB Europe, involve a manifest error of judgment on the part of the GBA.

The GBA argues that IAB Europe is responsible for the processing of TC Strings under the TCF as it exercises (within its own agenda as *Managing Organisation*) decisive influence on the processing through the framework it has set up. The real purpose of the framework is to enable and promote the purchase and sale of online advertising space. IAB Europe establishes the essential means by bindingly prescribing, among other things through the TCF, how CMPs should capture users' consent or objections in a TC String. Finally, the Dispute Chamber is mindful that IAB Europe also participates in determining the purpose and means of processing personal data under the OpenRTB.

Regarding IAB Europe's seventh grievance, the GBA reiterates that IAB Europe is a joint data controller. Both CMPs and publishers and Adtech vendors are joint data controllers. However, this joint processing responsibility cannot detract from IAB's responsibility.

The **complainants** argue that IAB Europe is a controller of the processing of personal data in the TCF itself given its overriding control over the operation of the . It is IAB Europe as the authoritative industry organization that organizes, coordinates and promotes the processing operations within the TCF, while the participants in the TCF merely perform what IAB Europe has prescribed. The participants in the TCF are joint controllers with IAB Europe : IAB Europe decides on the general purposes and means of the



processing of personal data in the TCF, while the other participants decide on implementation in their own contexts.

### Macktenhof verdict

57.

According to Article 4, point 7, AVG, the "processing controller/j "ye" is the *"natural person or rec/ir person, an over/ieids institution, a service or other body which/which, alone o/ together with others, determines the purposes and means of processing personal data"* (NADRUk MARKTENHOF).

### ***Oe Contested Decision***

58.

The Contested Decision concludes in section B.2 that IAB Europe is responsible for the processing of TC Strings under the TCF (edge number 361 of the Contested Decision).

59.

The reason for this is threefold.

First, the framework set up by IAB Europe - the TCF - plays a decisive role in the collection, processing and dissemination of users' preferences, consents and objections, regardless of whether IAB itself comes into contact with these (marginal 330 of the Contested Decision).

Second, the documentation accompanying the TCF shows that the purpose ("*why*") of the TC String and of its processing within the TCF was defined by IAB Europe. According to this documentation, the TCF was developed to capture, document and transmit Internet users' transparency and consent data in a standardized manner (marginal 338 of the Contested Decision). However, it is clear from the list of objectives contained in the TCF that the real purpose of this framework is to enable and promote the purchase and sale of online advertising space (edge number 336 of the Contested Decision).

Third, the Contested Decision considers that IAB Europe has also defined the essential means of processing TC Strings (i.e., "*whose data, what data, how lang and by whom are they processed*"!). Indeed, it is IAB Europe that the TCF prescribes in a binding manner how CMPs should capture users' consent or objections in a TC String, how vendors can access the TC managed by the CMP in a standardized manner, how this TC String should be stored in a cookie, which CMPs and



vendors may be communicated the TC String and what criteria determine how long the TC String should be retained (marginal 360 of the Contested Decision).

### *The Prejudicial Judgment*

60.

The Court considers the following : (EMPHASIS MARKETS COURT)

*"60 In view of the foregoing, it must be assumed that the first part of the second preliminary question seeks to determine whether a sectoral organization such as IAB Europe can be classified as a joint controller within the meaning of Articles 4(7) and 26(1) AVG.*

*61 To that end, therefore, it must be assessed whether that organization - given the particular circumstances of the case - influences for its own purposes the processing of personal data such as the TE string and determines together with others the purpose of and the means for that processing/ng.*

*62 As , first, the purpose of such processing of personal data, it appears - subject to the checks to be carried out by the referring court - from the file in the Court's possession, as in paragraphs 21 and 22 of this judgment, that the TCF drawn up by IAB Europe is a standard intended to ensure compliance with the AVG when the personal data of users of an Internet site or application are processed by certain companies participating in the online auctioning of ozone space.*

*63 Thus, the TCF is essentially designed to promote and enable the sale and purchase of advertising space on the Internet by those companies.*

*64 Therefore, subject to the verifications to be carried out by the referring court, it can be assumed that IAB Europe, for its own purposes, influences the processing of personal data at issue in the main proceedings and thereby, together with its members, determines the purpose of such processing.*

*65 Secondly, as regards the means for such processing of personal data, it is clear from the file in the Court's - to checks to be carried out by the referring court - that the TCF is a standard which the members of IAB Europe are expected to if they " wish to " join " that association. In particular, IAB Europe - as it confirmed at the hearing before the Court - may, with regard to one of its members that the*



*rules of had TCF not complied with, take a suspension decision for non-compliance that may result in the member concerned w'or being excluded from the TCF and, consequently, for the processing of personal data it performs through TC-strings, not being able to rely on the AVG compliance guarantee that this system is supposed to provide.*

66 *In addition, from a practical point of view - as mentioned in paragraph 21 of this judgment - the TCF prepared by IAB Europe contains technical specifications for processing the TC string. In particular, those specifications describe precisely how CMPs should record the preferences that users have regarding the processing of their personal data, and how those should be processed in order to a TC string. Furthermore, it also lays down precise rules on the content of the TC string as well as on the storage and sharing uan that .*

67 *Thus, the decision of February 2, 2022 shows that IAB Europe prescribes in these , among other things, the standardized way in which the various parties involved in' the TCF can consult the preferences, objections and consents listed in the TC string.*

68 *Therefore, subject to the findings to be made by the referring court, it must be assumed that a sectoral body such as IAB Europe influences, for its own purposes, the processing of personal data at issue in the main proceedings and thus determines, together with its members, the means of those processing operations. It follows that, in accordance with the case-law recalled in paragraph 57 of this judgment, it' must be regarded as a 'joint uer processing controller' within the meaning of Articles 4(7) and 26(1) of the AVG."*

#### *Review by the Market Court*

*In the present case, after verification by the Market Court, it is clear that IAB Europe has real decision-making power, both over the purposes and means of processing within the , and this given its overriding control over the operation of the TCF :*

a) IAB Europe acknowledges its responsibility for the TCF in its own documentation

62.

IAB Europe itself states in its "*Frequently Asked Questions*" on the TCF (version 2.0) that it is responsible for the TCF Policies.<sup>10</sup>

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<sup>10</sup>\* See, available at <https://iab europe.eu/wp-content/uploads/2019/08/TCF-v2.0-FAQs-1.pdf> (Exhibit B.15, complainants p. 2-3).



For example, in response to the question "Who manages the TCF?" she states the following :  
(NADRUUKFN MARKTENHOF)

*"The Managing Organization (BO) is IAB Europe. IAB Europe works closely with IAB Tech Lab to jointly observe the management of the participating organizations, experts and working groups that let create joint policies and technical specifications underlying the TCF." Within its role as BO of the IAB Europe, the BO is responsible for the TCF Policies, the GVL and the administration of the permission management platform. IAB Tech Lab is responsible for the development and iterations regarding the technical specifications associated with the TCF."*

And in its TCF Policies, IAB Europe defines itself as : (ADDRESS MARKETHOF)

*"the entity that administers and governs the TCF, understanding the Policies and the GVL. IAB Europe may update these Policies from time to time as it reasonably deems necessary to the continued success of the Framework."*

63.

IAB Europe thus acknowledges to be responsible for the Policies, the Specifications as well as the list of Vendors allowed to participate in the TCF. It goes without saying that the organization thus managing and administering the TCF is also 'responsible for it, including any processing of personal data imposed and organized by the TCF. Indeed, it is IAB Europe that enforces these processing of personal data on the other participants.

Thus, IAB Europe stipulates in the TCF Policies : (ADVERTISEMENT MARKETHOF)

*"A CMP must comply with all Policies applicable to CMPs distributed by the management organization in the Policies or in the documentation implementing the Policies, such as in operational Policies and procedures, guidelines, and enforcement decisions."*

IAB Europe thus states that all CMPs are obliged to strictly follow IAB Europe's instructions within the TCF, even IAB Europe's enforcement decisions. In addition, IAB Europe obliges CMPs to implement the TCF according to its Technical Specifications : (NADRUUK MARKTENHOF)

*"In addition to implementing the Framework according to the Specifications, a CMP must support the full range of Specifications support unless' the*



*Specifications explicitly state that a particular property is optional, in which case the CMP may choose to implement the optional property but is not required to so."*

64.

IAB Europe essentially argues that it would only be a small industry organization that wishes to players in the digital marketing ecosystem a standard or even a code of conduct for possible processing of user preferences.

65.

In its decision, the Dispute Chamber correctly found that IAB Europe does process personal data with the TCF (marginal numbers 317-321 of the Contested Decision). The Board of IAB Europe includes several of the largest Vendors and Publishers in the world, including Microsoft, Google, etc. (Complainants' Exhibit E.5). Thus, this is indeed a central body that with decisive influence makes certain processing of personal data happen.

IAB Europe's essential raison d'être is indisputably to represent the interests of the digital advertising industry. It therefore exerts an influence on the processing of personal data for its own purposes.

66.

In edge number 330 of the Contested Decision, the Dispute Chamber indicates that it considers IAB Europe to be a data controller for the collection, processing and dissemination of users' preferences, consents and objections and therefore for the processing operations in within the TCF.

**b) On determining the purpose and means of *these processing operations*, IAB Europe indeed exercises a decisive influence**

67.

- IAB Europe has a shared purpose with the other participants for the processing of personal data, which incidentally all have the same [shared1 purpose, which is to ensure that user preferences are captured in a structured way and then shared with all other participants. Even though many TCF participants may be competitors, when it comes to the processing of user preferences under the TCF, they all have similar interests, which are also similar to those of IAB



Europe as an industry federation : ensuring that digital advertising practices such as OpenRTB can .

- IAB Europe organizes, coordinates and promotes the processing of personal data in the . Indeed, IAB Europe itself states that it manages and administers the TCF and describes in detail its organizing and coordinating task. Indeed, it determines the minimum personal data to be , the means for sharing the TC String, and above all, it also enforces compliance with the TCF.
- The concept of a data controller in *this case* [just does] have to interpreted broadly, since IAB Europe is the only one who, as it itself states, manages and administers the TCF and can therefore resolve the issues identified by the Dispute Resolution Chamber, after consultation with all other EU regulators.

The Dispute Chamber therefore correctly found in the Contested Decision that IAB Europe is a data controller for the processing of TC Strings within the TCF.

### **c) The qualification of IAB Europe In the Contested Decision as joint controllers**

68.

Joint responsibility exists under Article 26 AVG :

*"Where two or more controllers jointly determine the purposes and means of processing, they shall be joint . They shall determine in a transparent manner their respective responsibilities for compliance with the obligations under this Regulation, in particular as regards the exercise of the rights of the data subject and their respective obligations to provide the information referred to in Articles 13 and 14, by means of an arrangement between them, except if and to the extent that the respective responsibilities of the controllers are determined by a provision of Union or Member State law applicable to the controllers. The scheme may a contact point for data subjects.*

*2. The arrangement referred to in paragraph 1 shall make clear the respective roles the joint controllers and their respective relationships with data subjects. The substantial content of the arrangement shall be made available to the data subject.*

*3. Notwithstanding the terms of the arrangement referred to in paragraph 1, the data subject may exercise his rights under this Regulation in relation to and against any controller."*

69.

The Contested Decision finds in section B.3 that IAB Europe together with the TCF participants (CMPs, publishers, *vendors*) are *jointly responsible* for the processing of personal data in the context of the TCF and of the OpenRTB.

70.

In edge number 544 of the Contested Decision, the Dispute Chamber does not find that IAB Europe is solely responsible for the processing of personal data under OpenRTB. The proportion of the TCF participants' respective responsibilities varies depending on the stage of processing (TCF *versus* OpenRTB) and depending on whether they act inside or outside the TCF.

71.

IAB Europe denies that it qualifies as a joint data controller with publishers, CMPs and *adtech vendors* for the processing of personal data under the TCF and OpenRTB.

It should be generally pointed out that the Dispute Chamber's finding in the Contested 8 Decision, that a party other than IAB Europe also exercises influence over the purposes and means of , in no way implies that IAB Europe not.

72.

No document submitted to the Market Court shows how IAB Europe and the TCF participants have agreed on a mutual and transparent arrangement regarding their respective responsibilities as required by the aforementioned article of the AVG.

73.

The Court of Justice, subject to verifications to be made by the referring court, ruled in the Prejudicial Judgment that IAB Europe is a joint data controller with respect to the processing of personal data it carries out jointly with its members through TC strings within the TCF (Prejudicial Judgment, margin number 68).

However, the Court of Justice also ruled the following in the Prejudicial Judgment :  
(NADRUKKEN MARKTENHOË)

*"70. In addition, in response to the doubts of the dissenting judge, it must be held that any joint responsibility of that sector organization does not automatically extend to subsequent processing of personal data by third parties, such as*



*providers of Internet sites or applications, users' preferences for the purpose of targeted online advertising.*

71. *In this regard, it should first be noted that the "processing" of personal data is defined in Article 4, point 2, AVG as "any operation or set of operations which performed upon personal data or sets of personal data, whether or not by automatic means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction of data."*

72. *This definition makes it clear that the processing of personal data may consist of one or more operations, each of which relates to a different stage of that processing.*

73. *Second, it follows from Articles 4(7) and 26(1) of the AVG - as the Court has already held - that a natural or legal person can be regarded as jointly responsible for the processing of personal data only if it "determines jointly with others the purposes and means of that processing. Accordingly, that natural or legal person - without prejudice to any civil liability provided for by national law in this regard - cannot be regarded as being responsible, within the meaning of those provisions, for processing operations which take place earlier or later in the processing chain and for which, respectively, he' does not determine the purposes and means (see, by analogy, judgment of 29 July 2019, Fashion ID, C-40/J7, EU.'C.'2019:629, paragraph 74).*

74. *In the present case, a distinction must be made between, on the one hand, the processing of personal data by the members of IAB Europe - namely, Internet site or application providers and data brokers or advertising platforms - when "storing the consent preferences of the users concerned in a TC string according to the standard established in the TCF and, on the other hand, the processing of personal data that these companies and subsequently carry out on the basis of those preferences, for example, by forwarding those to third parties or personalized advertising offers to those users.*

75. *Subject to the verifications to be carried out by the referring court, IAB Europe does not appear to be involved in such subsequent processing, so that it must be considered that such an organization is not automatically jointly responsible with those companies and third parties for the processing of personal data on the basis of the information contained in the personal data of the applicant.*  
*based on the preference data stored in a TC string for the affected users.*

76. *Therefore, an industry organization such as IAB Europe can only be deemed responsible for such subsequent processing only if it is established that it has influence*



*exerts on the determination of the purpose of such processing and of the manner in which it is carried out, which the rejecting court must ascertain in the light of all the relevant circumstances of the main proceedings."*

**Thus, it must first be considered how the Contested Decision's co-responsibility of IAB Europe for processing personal data in the context of TCF justified.**

74.

Step-by-step and reasoned, the Dispute Chamber states *why* and *for what* IAB Europe is responsible, as well as *with whom* :

- personal data are processed within the TCF (margin number 321 of the Contested Decision) ;
- the purpose for processing personal data within the TCF, with in particular the TC String, is defined by IAB Europe in its TCF Policies (margin number 338 of the Contested Decision) ;
- IAB Europe determines the means of processing personal data within the TCF, with in particular the TC String (marginal 360 of the Contested Decision) ;
- IAB Europe is responsible for the processing of personal data within the TCF, with particular reference to the TC String (margin number 361 of the Contested Decision);
- Moreover, IAB Europe is jointly responsible for the processing of *personal data* within the TCF, with in particular the *iC String* (marginal 402 of the Contested Decision), together with :
  - o the CMPs (marginal numbers 382 and 38J of the Contested 8decision} ;
  - o the Publishers (margin numbers 392-394 of the Contested Decision) and
  - o the Vendors (margin number 399 of the Contested Decision).

75.

The above demonstrates that in the Contested Decision, the Dispute Chamber has established the limits IAB Europe's responsibility. The "*offering*" or obligation by IAB Europe of a "*standard*" or framework (TCF) for AVG compliance must in the present case and in light of the above-mentioned documents in the file actually be considered a processing purpose in itself



considered *for which* IAB Europe is equally responsible as its members. fAB Europe is therefore in a position to safeguard the rights of data subjects and to comply with the obligations by the AVG.

IAB Europe is thus jointly responsible with TCF participants for storing the consent preferences of the affected users in the TC String.

The Contested Decision is correctly reasoned on this point.

**Next, it must be considered how the Contested Decision justified IAB Europe's co-responsibility for the processing of personal data In the context of OpenRTB.**

76.

ftTB stands for *real-time bidding*. RTB is a way to buy and sell ads through real-time auctions, meaning transactions are made in the time it takes for a Web page to load.

77.

When an Internet user *visits* a Web site, his or browsing habits on that Web site are (often) tracked to enable personalized advertisements. Personal information regarding the user is then matched with available advertisers and a real-time auction takes place between advertisers that *meet* certain criteria. A distinction must be made here between data processing by the providers of a website or application and subsequent data processing by third parties. A simple example : a user visits a website offering organic dog food, but does not buy anything. The next moment, that same user visits a news website and suddenly sees ads about organic dog food. These ads are placed using real-time bidding.

78.

The ECJ states that the joint responsibility of IAB Europe and its members for the processing of consent preferences in a TC string must be distinguished from the processing of personal data based on those preferences (in the context of Open RTB). The CJEU also notes that IAB Europe does not IAB Europe appear to be involved , and thus does not IAB influence, such subsequent processing, such as, for example, the provision of personalized advertising offers to users.

79.

Thus, with respect IAB Europe's co-responsibility for further processing under OpenRTB, following the Pre-Judgment, the Market Court must itself assess whether IAB



Europe with the TCF "influences" the further processing of personal data under OpenRTB. Indeed, that assessment was not yet made by the Court of Justice as the GBA correctly notes in its conclusions.

The complainants argue in Band No. T77 of their conclusions :

*"This case concerns the processing of personal data in the context of the . While OpenRTB is the motivating reason for IAB Europe why the TCF came , it does not look at the specific processing of personal data that takes place in OpenRTB."*

The GBA defends a slightly different view : It tries to argue in the Contested Decision that the TCF does not stand alone but serves OpenRTB (edge number 370 of the Contested Decision), that acts / subsequent processing of CMPs, of publishers and of TCF vendors outside the TCF are of interest and lead to IAB Europe co-responsible for them. It refers for that purpose to what is described in margin numbers 367 and following of the Contested Decision : (NADRU MARKTENHOF)

*"367. Both in its conclusions and during the hearing, IAB Europe emphasized that the TCF and the OpenRTB system are completely independent of each other, in the sense that adtech vendors, even without participating in the TCF, can freely process personal data within the framework of the OpenRTB. **Complainants**, on the other hand, have always mentioned the inherent interconnectedness between OpenRTB and the TCF, which the defendant itself confirms - according to complainants - in the TCF Implementation Guidelines.*

*368. The Litigation Chamber finds that the defendant's argument cannot be followed, given that the defendant, on the one hand, repeatedly states in its conclusions that the very reason for the existence of the TCF is to bring the processing of personal data based on the OpenRTB protocol in conformity with the applicable regulations, including the AVG and the ePrivacy Directives. While the Litigation Chamber understands that the TCF may be used for other applications by publishers, whether or not in collaboration with CMPs, it is equally certain that the TCF was never intended to be a stand-alone, onafhankelijk ecosystem.*

*369. On the contrary, the Litigation Chamber finds that the Transparency and Consent Framework includes policies and technical specifications that should enable **publishers of websites and applications (publishers)** and adtech partners that support the targeting, delivery and measurement of advertising and content (vendors) to obtain consent or establish objections, transparently disclose their processing purposes, and establish a valid legal basis for processing personal data for the provision of digital advertising.*



370. Thus, the Litigation Chamber finds that the decisions translated by IAB Europe into, on the one hand, the provisions under the policies and technical specifications under the TEL and, on the other hand, the means and purposes determined by the participating organizations with respect to the processing - whether in the framework of OpenRTB or not - of users' personal data, should be considered as convergent decisions. Indeed, IAB Europe developed an ecosystem within which users' consent, objections and preferences are collected and exchanged not for their own purposes or self-preservation, but to facilitate further processing by third parties (i.e. publishers and adtech vendors) etc.

371. Consequently, the Litigation Chamber finds that IAB Europe and the respective participating organizations should be considered as joint controllers for the collection and subsequent "dissemination of users' consents, concerns and preferences, as well as for the related processing of their personal data, without, however, the responsibility of participating CMPs and adtech vendors detracting from the responsibility of IAB Europe."

The following margin numbers from the Contested Decision contradict the foregoing findings of the Disputes Chamber : (ADJOURNMENT MARKTENHOF)

"495. Although the Litigation Chamber has already ruled in this decision on the processing operations carried out in the OpenRTB and concluded that these processing operations do not comply with the fundamental principles of purpose limitation and data minimization (since no guarantee is provided to ensure that the personal data collected and disseminated in the that the personal data collected and disseminated within the framework of the OpenRTB are limited to information strictly necessary for the purposes envisaged), the Dispute Resolution Chamber again stresses that the complainants have indicated in their conclusions that they limit the scope of their allegations to the processing operations within the TCF. Also, the Inspectorate has clarified in its report that IAB Europe does not act as data controller for the processing operations carried out entirely under the OpenRTB protocol.

544. Not the nature and purpose of the processing, and more the nature of the data, the Dispute Chamber notes that the TC String, as an expression of users' preferences regarding the processing purposes and potential adtech vendors offered through the CMP interface, is the cornerstone of the TCF. Although the scope of this decision is the TCF and its TC String, and the sanction imposed on the Respondent relates solely to that framework, the compliance of OpenRTB with the AVG is assessed as part of a holistic



***analysis of the TCF and its Interaction with the AVG. Since the current version of the TCF is let tool on which the Defendant relies to demonstrate its compliance with the AVG, and since the Defendant facilitates membership and use of the OpenRTB for a significantly number of participating organizations, the Dispute Chamber considers that the IAB Europe plays a central role with respect to the OpenRTB, without being a data in that context."***

IAB Europe concludes in the present (marginal 39 et seq. of its briefs):

*"By extending the scope of the decision to OpenRTB and its stakeholders, the Dispute Resolution Chamber lost the ability to clearly distinguish the roles of the parties and their corresponding responsibilities, for the various data processing operations. Very often it is unclear what data the Dispute Chamber is talking about, whose interests it's into account and who it considers responsible for what."*

80.

The Markets Court finds that the Contested Decision thus inconsistently reasoned on this point.

The Market Court further considered that in their briefs, the plaintiffs indicated that they limited the scope of this lawsuit to the processing operations within the TCF.

Moreover, the Court notes that the Inspectorate itself clarifies in its report that IAB Europe does not act as a data controller for the processing operations carried out entirely under the OpenRTB .

In any event, none of the documents submitted to the Court indicate that IAB Europe is acting as a (joint) data controller for the processing operations carried out entirely under the OpenRTB protocol.

Based on the foregoing, IAB Europe's sixth grievance is unfounded and IAB Europe's seventh grievance is only well-founded to the extent that the Contested Decision suggests, but does not show, that IAB Europe is acting as a (joint) controller for the processing operations carried out entirely under the OpenRTB .

#### GRIEVES RELATING TO THE ADOPTION OF THE INFRINGEMENT ON THE AVG IN THE DECISION

81.

The Contested Decision establishes the following violations :

*"The Dispute Chamber found in the Contested Decision that IAB Europe infringed the following articles:*



• Articles 5.1.a and 6 AVG - The current TCF does not provide a legal basis for processing users' preferences under the form of a TC String. Moreover, the Dispute Chamber notes that the TCF offers two bases for the processing of personal data by participating adtech vendors, but finds that neither can be used. First, data subjects' consent is currently not given in a sufficiently specific, informed and granular manner. Second, the legitimate interest of the organizations participating in the TCF does not outweigh the interests of data subjects, given the large-scale processing of their TCF preferences under the OpenRTB and the impact it may have on them. Since none of the grounds for lawfulness listed in Article 6 AVG apply to this processing, as explained above, the Defendant is in breach of Articles 5(1)(a) and 6 AVG.

*g van hun TCF voorkeuren in het kader van het OpenRTB en de gevolgen die dit voor hen kan hebben. Aangezien geen van de in artikel 6 AVG genoemde gronden voor rechtmatigheid van toepassing is op deze verwerking, zoals hierboven uiteengezet, maakt de verweerster inbreuk op artikel 5, lid 1, onder a), en artikel 6 van de AVG.*

Strings once they have been generated by the CMPs and stored on users' devices, the Dispute Resolution Chamber considers that it cannot oblige the respondent to remove a posteriori all TC Strings generated to date. More, it is the responsibility of the CMPs and publishers implementing the TCF to take appropriate measures in accordance with Articles 24 and 25 of the AVG to that personal data collected in violation of Articles 5 and 6 of the AVG are no longer processed and are also deleted. To the extent that IAB Europe is still storing TC Strings derived from the no longer available globally scoped consent cookies, the Dispute Chamber also considers that the Defendant should take the necessary measures to ensure that these no longer necessary personal data are permanently deleted.

• Articles J2, J3, and 14 AVG - The way the information is provided to data subjects does not meet the requirement of a "transparent, understandable and easily accessible form." Users of a website or app participating in the TCF do not receive sufficient information about the categories of personal data about them and, moreover, cannot determine in advance the scope and consequences of the processing. The information provided to users is too general to the specific processing of each vendor, which also makes it impossible to determine the granularity - and thus the validity - of the consent obtained for processing carried out using the OpenRTB protocol. Data subjects cannot know in advance the scope and impact of the processing



oversee and therefore do not have sufficient control over the processing of their data to not to be surprised later by the further processing of their personal data.

• Articles 24, 25, S.1.f and 32 AVG - As explained above, under 5(1)(f) and 32 AVG, the controller is obliged to the security of the processing and the integrity of the personal data processed. The

Litigation Chamber that the combined reading of Articles 5(1)(b) and 32, as well as Articles 5(2) and 24 AVG (which the controller to the principle of accountability) requires the controller to demonstrate compliance with Article 32 AVG by implementing appropriate technical and organizational measures in a transparent and traceable manner. Under the current TCF system, adtech vendors receive a consent signal without any technical or organizational measures to ensure that this consent signal is valid or that an adtech vendor has actually received the signal (rather than having generated it). In the absence of systematic and automated monitoring systems of the participating CMPs and adtech vendors by the Defendant, the integrity of the TC String is not sufficiently guaranteed, as it is possible for the CMPs to falsify the signal to generate a euconsent-v2 cookie and thus reproduce a "false consent" from users for all purposes and for all types of partners. As indicated above, this hypothesis is also expressly included in the terms and conditions of the TCF. The Litigation Chamber therefore finds that IAB Europe in its capacity as Managing Organization has designed and provides a consent management system, but does not take the necessary steps to ensure the validity, integrity and compliance of preferences as well as users' consent. The Litigation Chamber also considers that the current version of the TCF does not facilitate the exercise of the rights of data subjects, especially in view of the joint processing responsibility of the publisher, the implemented CMP and the defendant. The Geschillenkamer also underlines that the AVG requires data subjects to be able to exercise their rights vis-à-vis each of the joint processing controllers in the TCF in order to comply with Articles 24 and 25 of the AVG. In view of the foregoing, the Disputes Chamber finds that the Respondent has breached its obligations in the areas of security of processing, integrity of personal data and data protection by design and default settings (Article 24, Article 25, Article 5.1.f, and Article 32 of the AVG).

Furthermore, in order to comply with Articles 24 and 25 of the AVG. In view of the foregoing, the Disputes Chamber finds that the Respondent has breached its obligations in the areas of security of processing, integrity of personal data and data protection by design and default settings (Article 24, Article 25, Article 5.1.f, Article 32 of the AVG).



- *Article 30 AVG - As "explained above, "the Dispute Resolution Chamber cannot follow the Defendant's argument that it can' qualify for the exceptions to the obligation to a register of processing activities" provided for in Article 30.5 AVG. Because the Defendant's register of processing activities does not include any processing operations relating to the TCF, except for the management of members as well as the administration of the TCF, although IAB Europe, as Managing Organization, can access ele records of consent, the GK finds a violation of Article 30 AVG.*
- *Article 35 AVG - Taking into account the large number of data subjects who come into contact with websites and applications implementing the TCF, as well as organizations participating in the TCF, on the one hand, and the impact of the TCF on the large-scale processing of personal data in the OpenRTB protocol, on the other hand, the Litigation Chamber that IAB Europe has failed to a comprehensive data protection impact assessment (GE-B) with respect to the processing of personal data within the TCF. The Litigation Chamber finds that the TCF was developed, among other things, for the RTB system, which" systematically and automatically observes, collects, records or influences users' online behavior, including for advertising purposes. Likewise, it is not disputed that within the OpenRTB, data are widely collected from" third parties (DMPs) in order to analyze or predict the economic situation, health, personal preferences or interests, reliability or behavior, location or movements of natural persons.*
- *Article 37, AVG - Because of the large-scale, regular and systematic observation of identifiable users that the TCF entails, and given the defendant's role, specifically its capacity as Managing Organization, the Dispute Resolution Chamber finds that IAB Europe should have appointed a Data Protection Officer (DPO). By failing to do so, the Defendant' is in breach of Article 37, AVG."*

**EIGHTH GRIEF IAB Europe : The Contested Decision wrongly concludes that IAB Europe needs a legal basis and that no legal basis exists for the processing of TC Strings and OpenRTB data. (violation of Articles 5.1.a and 6 AVG)**

*Eighth defense GBA, part sixth plea complainants.*

### **Summary views of parties**

the processing of TC Strings, IAB Europe argues that the Contested Decision recognizes that they are processed by the CMPs and that the CMPs are jointly responsible with IAB Europe for that processing ; consequently, at least the should also be held responsible for hee possible lack of a legal basis, and not (only) fAB Europe. Moreover, the Dispute Chamber would not have examined whether CMPs, in their user interface



seek consent from the data subject to record their consent, objections and preferences. IAB Europe draws the conclusion that the Contested Decision cannot find that consent has not been obtained. Finally, IAB Europe considers the balancing of interests regarding the (lack of a) legitimate interest within the meaning of Article 6, first point (f) AVG (margin numbers 421-423 of the Contested Decision) to be wrong.

The GBA argues that IAB Europe, in its capacity as a data controller, requires a legal basis for the processing of TC Strings by CMPs, but there is no such legal basis. IAB Europe therefore violated Article 6 AVG.

According to the **complainants**, IAB Europe's processing of personal data in the TCF violates the basic principle of fair, lawful and transparent processing. Indeed, it does not have any legal basis for the processing, has obtained the personal data in a misleading way, and does not provide either the complainants or any other data subjects with the legally required information about the processing of personal data it carries out (violation of Articles 5, 6, 12, 13 and 14 AVG).

#### Judgment of the Market

#### Court 82.

Article 5(1)(a) AVG states that all processing of personal data must be carried out in "*a manner which lawful, decent and rronsporont in relation to the data subject.*"

The "rechtfmot/g" nature of a processing operation essentially means that it must meet àll legal requirements, in particular having a legal basis.

Since IAB Europe does not provide any information about the processing of personal data to data subjects, data subjects are left guessing as to which legal basis provided for in Article 6 AVG IAB Europe would invoke for its processing of personal data in the TCF.

However, it cannot on any legal basis under Article 6 AVG for the processing of the TC String in the TCF. Moreover, the Litigation Chamber correctly states that IAB Europe cannot suffice merely by to subsequent notifications that might be made to data subjects by *Publishers or Publishers*.

83.

IAB Europe cannot rely on the consent of complainants and other data subjects (Article 6(1)(a) AVG), as it never sought, let alone obtained, such consent. Also nowhere in the TCF Policies, Technical Specifications or General Terms and Conditions is a mechanism



cited where IAB Europe would ask "data subjects permission to cure a uniquely-identifying string that shares their privacy preferences with a very large number of recipients. This lack of consent is even more egregious when those data subjects indicate in a CMP that they do not want to share personal data with anyone.

The Disputes Chamber was correct to find in the Contested Decision that nowhere does IAB Europe obtain consent to process the personal data in the TCF, with in particular the TC String (edge number 407 of the Contested Decision).

84.

IAB Europe also cannot rely on the necessity of the processing of the TC String within the TCF for the performance of a contract with the Complainants and other data subjects (Article 6(1)(b) AVG), as there is no contract at all between them and IAB Europe. Therefore, the Dispute Chamber correctly established this in the Contested Decision (margin number 408 of the Contested Decision).

85.

Nor can it rely on the necessity of the TC String's processing operations within the TCF to comply with a legal obligation incumbent upon it (Article 6(1)(c) AVG), or protect the vital interests of the complainants and other data subjects (Article 6(1)(d) AVG), or in the performance of a task carried out in the public interest (Article 6(1)(e) AVG), as none of these justifications are present in the matter.

86.

Finally, Zi) also cannot rely on the necessity of the TC String's processing operations within the TCF to protect its legitimate interests, or those of a third party (Article 6(1)(f) AVG). Indeed, the Dispute Chamber did the balancing of interests in the Contested Decision and rightly found that the conditions for an application of Article 6(1)(f) AVG are not met. IAB Europe - on whom the burden of proof of lawful data processing rests - did not provide sufficient insight into the considerations it made and the factual data relevant in this respect. The conclusion is therefore that it has not been established that the processing of personal data within the TCF is necessary for a legitimate interest of IAB Europe or its members. IAB Europe does not sufficiently recognize that users have a right to and an interest in the protection of their privacy and personal data, and that the processing of personal data for advertising purposes may this. Furthermore, as a data controller, it must take into account the reasonable expectations of data subjects. No document submitted to the Court showed that IAB Europe actually so.

87.



The analysis related to the g lack of a legal basis in the Contested Decision is not incoherent as IAB Europe argues. Moreover, the Dispute Chamber did not make its analysis *in the abstract* but rather applied it in a concrete manner.

The Contested Decision is correctly reasoned as to the lack of a legal basis on the part of IAB Europe for its processing of personal data in the TCF.

IAB Europe's eighth grievance is therefore *unfounded*.

**NEGTH GRIEF IAB Europe : The Dispute Chamber erroneously concludes that IAB Europe has failed to comply with its**

**violates duty of transparency (§§465-473).**

*Ninth defense GBA, part sixth plea complainants.*

### **Summary views of parties**

**IAB Europe** disputes the Dispute Chamber's opinion in the Contested Decision according to which it violates the transparency obligation in Articles 12, 13 and 14 AVG. First, the Contested Decision would not have investigated and identified the defective disclosure on its own. Second, any information not provided by IAB Europe could and should be supplemented by the CMPs and publishers. Third, IAB Europe opposes the finding that the large number of third-party recipients makes it impossible for data subjects to give informed consent to processing and thus violates the principle of transparency.

According to the GBA, the lack of disclosure was convincingly demonstrated by the complainants and additionally relies on the Technical Report of the Inspection Service.

As for the obligation to compliance with the obligation of transparency, this rests on the data controller, being IAB Europe and cannot be passed on to the CMPs and publishers. The Dispute Chamber's factual assessment does not appear manifestly unreasonable. It is irrelevant whether the consent preferences were already encoded in a TC String or encoded, given that also the making available of such personal data qualifies as processing according to Article 4 AVG and the data subject must therefore be informed about it.

Where the Contested Decision establishes a breach of the obligation of transparency, the lawfulness of the Contested Decision cannot be affected if the reasoning were incorrect. Indeed, the violation rests on several findings, only one of which is by IAB Europe. In any event, even if the TCF is only a minimum framework, it must still be in compliance with the AVG.



According to the Complainants, IAB Europe has breached its duty of transparency as a data controller, and the Dispute Resolution Chamber correctly relies for this conclusion on a thorough analysis of IAB Europe's own TCF documentation (e.g., margin numbers 467-473 of the Contested Decision).

### **Judgment of the Market Court**

88.

The Markets Court finds that the Contested Decision correctly makes the following findings based on the documents prepared by IAB Europe itself.

Neither on its own website nor in other sources does IAB explain stakeholders such as complainants or the GBA as a supervisory authority :

1. That IAB Europe is (joint) controller for the TCF and what its contact details are ;
2. What are the contact details of its data protection officer (which IAB Europe should appoint, as the Inspectorate also noted in its report, given its essential activity and role within the TCF) ;
3. what its processing purposes are and the legal basis for the processing (which, by the way, it does not have at all in this case, see above) ;
4. What categories of personal data it processes (in particular, the TC String) ;
5. Who all receives the personal data (this already includes at least all TCF participants who receive the TC String) ;
6. Whether it intends to transfer the personal data to recipients in third countries ;
7. how long personal data will be kept ;
8. What are the rights of data subjects ;
9. That data subjects may lodge complaints with the Data Protection Authority ;
10. That data subjects can revoke their given consents again ;
11. What the source of the personal data is.

89.

IAB Europe's own privacy policy on its website (piece B.18 **complainants**) cannot remedy this. Indeed, IAB Europe makes it clear that its privacy policy applies to only a limited number of data subjects :

*"IAB Europe respects the privacy of the visitors on its websites ("Websites") ("Users"), its registered members ("Members") to which it provides services as further specified in the General Terms of Use ("Services") and of Transparency & Consent Framework participants /"7CF Participants"). In this Privacy Policy, references to Members or TCF Participants mean both individual Members or TCF Participants and individuals who are employed by corporate*



*Members or TCF Participants. This Privacy Policy is also addressed to individuals outside IAB Europe involved in the public debate concerning digital advertising, with whom IAB Europe may interact and whose personal data it processes ("Stakeholders")."*

Or in Dutch (no official translation known):

*"IAB Europe respects the privacy of visitors to its websites ("Websites") ("Users"), of its registered members ("Members") to whom it provides services as further specified in the General Terms of Use ("Services") and of participants in the Transparency & Consent Framework ("TCF Participants"). In this Privacy Policy, Members or TCF Participants refers to both individual teden or TCF Participants and individuals employed by member companies o] TCF Participants. This Privacy Policy is also addressed to individuals outside of IAB Europe who are involved " the public debate on digital advertising, with whom IAB Europe may communicate and whose personal data it processes ("Stakeholders")."*

None of the categories of data subjects mentioned in this quote relates to data subjects whose personal data is processed in the TCF when they express certain preferences through a CMP and a TC String is generated for them. Consequently, the 2nd privacy policy is not relevant in this case and cannot be considered in assessing whether IAB Europe has complied with its transparency obligation.

Accordingly, IAB Europe violates Article 5(1)(a), Article 12 and Article 14 AVG, as the Dispute Chamber was entitled to find in the Contested Decision.

90.

IAB Europe did not inform data subjects prior to the processing operations. At the same time, it cannot invoke any of the exceptions provided for in Article 14(5) AVG in order not to have to provide this information, since '

- the data subjects do not yet have the information, since the processing operations with respect to them have so far been carried out without any transparency (Article 14(5)(a) AVG) ;
- it is neither impossible nor requires a disproportionate effort to disclose this information to data subjects, given IAB Europe's influence over the operation of the TCF (Article 14(5)(b) AVG) ;
- Obtaining this data is not required by law (subsection 14(5)(c) AVG) and
- the personal data should not remain confidential by virtue of professional secrecy (Article 14(5)(d) AVG).



The Contested Decision is correctly reasoned on the issue of lack of transparency on the part of IAB Europe for its processing of personal data in the TCF.

IAB Europe's ninth grievance is therefore *unfounded*.

**TENTH GRIEF IAB EUROPE** : The Contested Decision erroneously **concludes** that IAB Europe) violated its **obligations** regarding security, Integrity and data protection by design and default settings (**§§477-494**).

*Tenth defense GBA, fifth, seventh and eighth pleas complainants.*

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**IAB Europe** argues that it is not subject to the accountability obligation under Article 24 AVG, nor to the data protection obligation under Article 25 AVG, as it does not qualify as a data controller. Nor does it believe that it is obliged to enforce compliance with the TCF by the organizations participating in it, as it would merely be a private law agreement and, moreover, it would not be data controller. Finally, IAB Europe also disputes that it would bear any responsibility for any international transfers of data, as such transfers outside the scope of the TCF.

In subordinate order, IAB Europe argues that, even if it were accepted that it is a joint data controller with publishers and *vendors*, the AVG does not require it to supervise what are, in that case co-controllers. In addition, it accuses the Dispute Resolution Chamber of failing to provide evidence that the TCF's security is inadequate and does claim to so-called validation.

The GBA argues that IAB Europe, as a data controller, is subject to the obligations in Article 24(1) ; Article 5(1)(f) ; Article 32 and Chapter V of the AVG and that IAB Europe breached the security obligation.

Also according to the complainants who support the GBA's position, IAB Europe does not have an adequate protection mechanism. For example, IAB Europe does not specify how it would then ensure that CMPs effectively do not cooperate with Publishers who do not comply with the agreements made. All it claims is that the "*mechanisms for compliance in the TCF would* ." However, how this is supposed to provide real protection is a matter for complainants. Indeed, none of the mechanisms are based on real, proactive monitoring of TCF compliance. It is totally unclear to the complainants how IAB Europe could guarantee the security of the processed TC String at all when shared with the thousands of receiving companies.

Judgment of the Market Court



91.

The Market Court refers to what precedes and the correct assessment by the Dispute Resolution Chamber in the Contested Decision of IAB Europe as (joint) controller of personal data processing in the context of TCF.

92.

The starting point is that in order to protect the rights and freedoms of data subjects and the responsibility and liability of data controllers, it is necessary that the responsibilities established by the AVG be allocated in a clear manner (the mutual arrangement to be adopted by joint controllers under Article 26 AVG, which is not before us in the *present case*). The allocation of responsibilities is thus a matter for the joint controllers themselves, taking into account, on the one hand, the need for full compliance with the AVG and, on the other hand, the undesirable complexity (which could lead to a breach of the principles of lawfulness and transparency from Article 51) AVG).

The Market Court has already held above that the absence of a mutual arrangement or evidence thereof and the fact that both IAB Europe and the parties processing personal data with it under the TCF are all large or significant personal data processors (and thus by no means small entities with little influence over processing operations), implies **equal convergent responsibility hero** in this particular case.

This is appropriately expressed by the Dispute Chamber in the Contested Decision at margin number 371 in the following manner :

*"Accordingly, the Dispute Resolution Panel finds that IAB Europe and the respective participating organizations should be regarded as jointly responsible for the collection and subsequent dissemination of users' consents, objections and preferences, as well as for the related processing of their personal data, without, however, the responsibility participating CMPs and adtech vendors detracting from the responsibility of IAB Europe."*

As already held *above*, IAB Europe does qualify as a (joint) controller of TC Strings' processing under the TCF.

Consequently, it has both an accountability obligation (Article 24(1) / *uncto* Article 5(2) AVG) and a security obligation (Article 32 AVG / *uncto* Article 5(1)(f) AVG).



93.

IAB Europe is also a data controller with respect to TC Strings that would be by CMPs outside the EEA. On this point, IAB Europe argues that the TCF was explicitly not developed for international transfers by publishers, *vendors* and CMPs. However, that is not a relevant criterion under the AVG. IAB Europe has been identified as a controller of TC Strings under the TCF because it appears to determine the purposes and means of processing the personal data contained in the TC Strings. As a controller, it, like the processor(s), is obliged under Article 44 AVG to comply with the conditions in Chapter V of the AVG before transferring these personal data to a third country.

94.

IAB Europe further maintains that the TCF itself is contractual in nature. But this contractual nature does not at all prevent IAB Europe from requiring, in accordance with Article 24(1) AVG, *"appropriate technical and organizational measures (to) ensure and be able to demonstrate that the processing is carried out in accordance with (the AVG)."* it goes without saying that if the existence of an agreement between joint controllers were sufficient to escape this obligation, Article 24(1) AVG would be deprived of any useful effect.

The Contested Decision does provide evidence of a lack of security. It substantiates this by reference to a recent academic paper which IAB Europe claims one of the complainants contributed to" and further deduces this from the fact that the TCF Policy does cite the possibility of falsification or alteration of the TC Strings but merely stipulates that such manipulation is not . Accordingly, it fell to IAB Europe to produce before the Dispute Resolution Chamber or the Market Tribunal any relevant document that could demonstrate the contrary, *quod non*.

IAB Europe claim to provide a so-called validation, but it is a one-time, prior validation of the software used by CMPs to generate the TC Strings. This validation primarily prevents CMPs from generating unreadable, incorrect or non-TCF-compliant TC Strings.

The Contested Decision, on the other hand, correctly points out the lack of validation of individual TC Strings. Only such validation can prevent *vendors* from (potentially) falsifying user consent.

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" C. SANTOS, M. **NOUWENS**, M. **TOTH**, N. BIELOVA, V. ROCA, "Consent Management Platforms Under the AVG: Processors and/or Controllers?", in *Privacy Technologies and Policy*, APF 2021, LNCS, vol 12703, Springer, 2021. The Markets Court finds that any contribution by a complainant does not undermine the neutrality or quality of an academic contribution.



The Contested Decision is correctly reasoned on the issue of violations of security, integrity and data protection obligations by design and default settings on the part IAB Europe for its processing of personal data in the TCF.

IAB Europe's tenth grievance is therefore *unfounded*.

**ELFTH, TWAALFTH, THIRTEEN and FOURTH GRIEF IAB Europe** : [IAB Europe] **does not need to make any** data protection impact assessment (§§ **511-516 of the** Contested Decision), [IAB Europe] is not required to appoint a **data protection** functionary (§§ 517-524), [IAB Europe] does not **have** a legal **obligation to facilitate** the ultimatum of **data subjects'** rights (§§ 504-506) and [IAB Europe] **Is not required to have a register of processing activities** and in any case this Is not incomplete (§§ 507-510).

*Eleventh defense GBA.*

#### Summary views of parties

By its el(de to 14th grievance, IAB Europe disputes that it is required to conduct a data protection impact assessment under Article 35 AVG, appoint a data protection officer under Article 37 AVG, keep a register of processing activities under Article 30 AVG, and facilitate the exercise of data subjects' rights under Articles 15-22 AVG.

According to the GBA, it is pertinently incorrect that IAB Europe would only process personal data of its staff and of applicants, members and suppliers. It also argues that in order to qualify as a data controller, it in no way requires that a person have access to the personal data in question. Nor does it argue that Articles 30, 35 and 37 AVG make this a condition for the obligation to conduct a data protection impact assessment or appoint an officer. Without the TCF, according to the GBA, the processing of personal data in the context of RTB would simply be prohibited, as no consent can be obtained or demonstrated for these (lightning-fast) processing operations. For that reason alone - the GBA argues - it is "mischievous" to claim that the TCF protects Internet users, rather than exposes them to the mass exchange of their personal data.

**Plaintiffs** endorse the GBA's position. Judgment

of the Market Court.

On the obligation to **conduct a data protection impact assessment (Art. 3s AVG).**

95.



Having reviewed the Contested Decision and documents submitted to it (including the reports of the Inspectorate, document A133 file GBA), the Market Court cannot follow IAB Europe's argument that it can benefit from the exceptions to the obligation to a register of processing activities provided in Article 30(S) AVG. Since IAB Europe's register of processing activities does not contain any processing operations in relation to the TCF, except for the management of the TCF as well as the administration of the TCF, although IAB Europe, as *Managing Organization* or management organization, can access the *records of consent* (as above), the Dispute Chamber correctly finds a violation of Article 30 AVG in the Contested Decision. This was rightly expressed much earlier by the Inspectorate as follows :

*"The Inspectorate considers that the non communication by IAB Europe of its register of processing activities following its request of 04/06/2019 (Exhibit No. 18 of file DOS-2019-01377) is in contradiction with the provisions of Article 30(4) of the AVG. Moreover, IAB Europe's position that it " does not have to keep records of processing activities" is in srryd mel orti#e/ 30(5) von the AVG and with let position of the ECGB."*

96.

Considering the large number of data subjects who (may) come into contact with websites and applications the TCF, as well as organizations in the TCF, on the one hand, and the impact of the TCF on the large-scale processing of personal data in the OpenRTB Protocol, on the other hand, the Dispute Chamber rightly finds in the Contested Decision that IAB Europe wrongfully failed to conduct a comprehensive data protection impact assessment with respect to the processing of personal data within the .

*About the obligation to wiiien a data protection officer (Art. 37 AVG).*

97.

Because of the large-scale, regular and systematic observation of identifiable users that the TCF entails, and given the role of IAB Europe, as *Managing Organization*, the Dispute Resolution Chamber correctly finds in the Contested Decision that IAB Europe should have appointed a Data Protection Officer (DPO). By failing to do so, IAB Europe violated Article 37 AVG. This was also substantiated in the Inspectorate's report (Exhibit A133 file GBA):

*"The Inspection finds that IAB Europe has not complied with the obligations of Article 24(1) of the AVG. Oe reasons for this vostste/ling are the 'following: In its replies oon the inspectorate dated 26/06/2019 (Exhibit No. 22) and 20/08/2019 (Exhibit No. 29), IAB Europe states that "IAB Europe is a professional association whose main activities are the provision of information and tools to stakeholders (in particular companies) active in the digital advertising sector, as well as the provision of information*



*to the general public to verbalize their knowledge and inform them about the value that digital advertising for the market. Since IAB Europe did not meet the conditions referred to in Article 37 §1(b) of the AVG, it" did not appoint a data protection officer."*

*According to the Inspectorate, IAB Europe's approach set out above is not by the facts. The conditions of Article 37(1)(b) of the AVG are , since IAB Europe develops and manages the TCF in its capacity as " Managing Organization " Exhibits 32 and 38 of file DOS-2019-01377) and pursuant to page 7 of the terms and conditions for the IAB Europe Transparency & Consent Framework of IAB Europe ("Terms and ConditionsI ("General Terms and Conditions "J (piece 33 of file DOS-2019-01377)) has a right to access, store and process any information by the organizations in this ecosystem, stated in its "Privacy Policy."*

In so far as the Contested Decision rules on the breach by IAB Europe of the obligations on data protection impact assessment, on the appointment of a data protection officer and on the maintenance of a register of processing activities, as regards its processing of personal data in the TCF, it is correctly reasoned.

98.

This is also the case for the following passage in the Contested Decision that deals with the alleged violations regarding the rights of data subjects (Articles 15 to 22 AVG):

*"504. First of all, the Inspectorate notes in its report that certain complainants have alleged that it is impossible for those concerned to exercise their rights, although the investigation conducted by the Inspectorate did not these violations. In the absence von bewijs von an infringement, the Dispute Chamber limits its reasoning to general comments regarding the exercise of the rights of data subjects.*

*505. Second, the Dispute Chamber refers to the scope of the Complainants' written submissions, in which they" specifically limited their grievances tof the processing of the Complainants' personal data by the Respondent in the specific context of the TCF. Bj "consequence, the Disputes Chamber will niec adjudicate the circumstances in which data subjects can exercise their rights with respect to the processing of personal data in the "bid requests" vis-à-vis the adtech vendors, since this processing is carried out entirely in accordance with the OpenRTB protocol.*

*506. With respect to the current version of the TCF, however, the Dispute Chamber finds that the TCF does not appear to facilitate the Exercise of Data Subjects' rights, in that users cannot easily and at all times the CMP interface, so that*



*they can change their preferences and request the identity of the adtech vendors with whom their personal data have been shared through a bid request, in accordance with the OpenRTB protocol. In this regard, the Litigation Chamber underscores the importance of proper implementation and enforcement of the interface requirements set forth in the TCF Policies so that data subjects can effectively exercise their rights vis-à-vis each of the joint processing responsibilities, and notes" that the shared responsibility for this lies primarily with the CMPs and publishers. Based on the govensroonde, the Disputes Chamber is not In a position to find a breach uast of Articles 15-22 AVG."*

IAB Europe's 11<sup>de</sup>, 12<sup>de</sup>, 13<sup>d'</sup> and 14th grievances are therefore

*unfounded. THE ORDERS AND FINE !N THE CONTESTED*

99.

IAB Europe does not develop a separate grievance in its conclusion regarding the injunctions imposed on it and the administrative fine.

100.

In margin number 353 of its conclusions, IAB Europe states :

*"S53. Destruction of the fine - In addition, it should be emphasized that in calculating the fine in the Contested Decision, no distinction is made between the various alleged breaches of the AVG and their impact on the amount of the fine for [IAB Europe]. However, it is clear from the CJEU Judgment that they/s the Contested Decision as such does not contain sufficient justification for a huge proportion of the alleged infringements. As indicated earlier, five of the six infringements in the Contested Decision are based on (IAB Europe's) alleged processing responsibility for subsequent processing. However, it is clear from the CJEU Judgment that there is no processing responsibility on the part of [IAB Europe] for subsequent processing by third parties. This means that at least 80% of the Contested Decision is based on an erroneous assessment of the factual and legal facts of the case.*

*This already suffices as a circumstance to substantially reduce the fine (should a fine be justified - quod non, as further explained below).*

*Moreover, in accordance with the case law of the Court of Justice, an administrative fine can only be imposed "if it is established that the , which is both a legal person and an undertaking, has intentionally or negligently an infringement referred to in paragraphs 4 to 6 of that Article (83 AVG)."*



*In this case, [IAB Europe] certainly was not and cannot be accused of intentional wrongful conduct. Even in the Contested Decision, negligence was only alleged but not demonstrated and then only with respect to the integrity of the TC String (§547 Contested Decision). In light of the above-mentioned case law, only a can be imposed in proportion to the negligence established. In practice, [IAB Europe] has already taken the necessary steps within the limits of its role - as a non-processing responsible party - to promote compliance with the AVG by TCF participants.*

*The lack of negligence (and deliberate unrec/itmorlic behavior) is all the more obvious since fundamental questions to the CJEU have been raised on which the entirety of the case depends, even if it was first proposed to your Court by the Litigation Chamber itself. Asking questions to the CJEU clearly shows that a certain legal question is pertinent and that there is no unique and manifestly clear answer (yet).*

*Consequently, the imposition of an administrative fine was not justified."*

The GBA and the complainants' briefs no longer address the injunction and the administrative fine imposed.

#### **Judgment of the Market Court**

101.

Article 58(2) AVG provides the power for supervisory authorities to take one or more corrective measures against controllers or processors.

Under Article 58(2)(i) AVG, a supervisory authority may, depending on the circumstances of each case, impose an administrative fine in addition to or instead of the aforementioned corrective measures.

102.

In this regard, Article 83(1) AVG requires that an administrative fine imposed by an authority must be effective, proportionate and dissuasive in each case. Article 83(2) AVG contains a number of criteria that must be duly taken into account in a concrete case. A sanction to be by the GBA in the form of an administrative fine must be adequately justified, whereby the size of this sanction must, on the one hand, be in line with the circumstances and, on the other hand, be proportionate to the breach identified and to the capacity of the offending party to bear the costs.

103.



A fine of a criminal nature should be subject to judicial review with full jurisdiction."

To determine whether or a sanction is criminal in nature within the meaning of Article 6 ECHR, the Court the so-called Engel" criteria.

There are three Engel criteria :

- the qualification of the sanction in the internal law of the state concerned ;
- The nature of the violation for which the penalty is threatened ;
- The nature and severity of the maximum penalty that the individual risks.

The three criteria are not cumulative. Even if a sanction does not have the qualification of criminal sanction under domestic law, it may still have a criminal under the second or third criteria."

In order for an administrative fine to have a preventive and punitive purpose, it is required that it essentially seeks to prevent and punish an act or omission deemed illegal by the legislature and that the fine thus causes suffering to the perpetrator of that act or omission.<sup>20</sup>

104.

When the Market Court is asked to review an administrative fine that is punitive in nature within the meaning of Article 6 ECHR, it may examine the legality of that sanction and, in particular, whether it is reconcilable with the mandatory requirements of international treaties and domestic law, including general principles of law.

In particular, this right of review should allow the Court to consider whether the penalty is not disproportionate to the infringement, so that it may examine whether a fine of such magnitude could reasonably be imposed.

This right of review does not mean that the Market Court may, based on a subjective appreciation of what it deems reasonable, for mere expediency and against statutory rules, remit or reduce a fine."

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<sup>19</sup>\* ECHR 4 March 2004, *Silvester's Horeca Service v. Belgium*, no. 47650/99, RO 27 and ECHR 4 March 2014, *Grande Stevens v. Italy*, no. 18640/10, RO :t39.

<sup>19</sup> Named after the ECHR judgment June 6, 1976, *Engel v. Netherlands*. "  
See Cass. Sept. 23, 2022, concl. J. Van der Fraenen, [www.jggrltao.be](http://www.jggrltao.be).  
See Cass. June 2, 2023, F.22.0005.N, concl. S. Ravyse, [www.iuportal.be](http://www.iuportal.be).

<sup>21</sup> See Cass. June 17, 2024, C.23.0144.N [www.iuportal.be](http://www.iuportal.be).



105.

The court considers that the fine of 250,000.00 imposed by the GBA, given its amount, is criminal in nature within the meaning of Article 6(1) ECHR.

106.

On October 11, 2021 (document A179 file GBA), the Dispute Resolution Chamber of the GBA made clear to IAB Europe its intention to impose an administrative fine and, in accordance with the indications of the Market Court, asked IAB Europe to submit its reaction in this respect. IAB Europe therefore had the opportunity to specifically defend itself with regard to the fine, which it did (document A180 file GBA).

107.

In determining the fine, the GBA considered the following circumstances (Exhibit A179 file GBA) :

- *"IAB Europe is a trade association whose main activities are said to be the provision of information and tools to stakeholders (in particular companies) active in the digital advertising sector in the European Union as well as the provision of information to the general public to improve their knowledge and inform them of the value of digital advertising to the market. The defendant therefore has a leading role in relation to its members as well as to the wider digital marketing and advertising sector in the European Union."*
- *"IAB Europe is part of the IAB Global Network as well as von the Interactive Advertising Bureau (IAB) consortium, based in New York."*
- *"IAB Europe's TCF, in its current version, aims to be used **in an increasing number** of websites and applications, which means that more and more data subjects will be confronted with the TCF and the associated processing of their personal data."*

It also took into account the following criteria : a) nature of the infringement, b) seriousness of the infringement, c) duration of the infringement and d) the necessary deterrent effect to prevent further infringements.

108.

IAB Europe essentially accuses the GBA of failing to consider *the lack negligence (and intentional wrongful conduct)*.

109.

However, in the Contested Decision (margin number 547), the Dispute Chamber specifically and pertinently responds to this point that is now being raised again by IAB Europe before the Market Court :



*"Article 83.2.b AVG requires the Data Protection Authority to take into account the intentional or negligent nature of the breach. Since the defendant, in its capacity as a management organization, was aware of the risks associated with non-compliance with the TCF, in particular with respect to the integrity of the TC String and the encapsulated choices and preferences of users, and given the impact of the TC String on subsequent processing in the context of the OpenRTB, the Dispute Resolution Chamber finds that IAB Europe has been negligent in adopting the measures to implement the current version of the TCF."*

The Contested Decision(s) is correctly reasoned on this point.

After review, the Court considers that, in view of the foregoing, the GBA Disputes Chamber could reasonably impose a fine of EUR 250,000.00.

In conclusion, while the contested decision is admittedly procedurally flawed as set out in the Interlocutory Judgment, IAB Europe's **substantive** grievances against the contested decision are unfounded, except to the extent that the contested decision holds that IAB Europe acts as a (joint) controller of the **processing operations** that take place entirely under the OpenRTB protocol. The Market Court also confirms the sanctions imposed on IAB Europe by the Contested Decision that relate solely to processing operations **within the TCF**. It is not necessary to **refer** the case back to the Dispute Resolution Chamber, nor is it legally **required** for the Market Court to proceed with a European consultation procedure.

#### ON COSTS AND LEGAL FEES

110.

The costs of the proceedings including a jurisdictional fee in the amount of EUR 7,848.84 (it concerns an application to set aside a fine of EUR 250,000.00) (in accordance with the case law of the Court of Cassation - Cass. January 23, 2023, C.22.0158.N and Cass. January 16, 2023, C.21.0193.F - the Market Court automatically adjusts the rate to that applicable at the time of the judgment) for the GBA shall be borne by IAB Europe, being the largely unsuccessful party.

IAB Europe is also responsible for legal rights and Budget contributions.

Since the plaintiffs are only intervening in the present proceedings as voluntary intervenors (custodial intervention), they cannot be ordered to pay, nor receive, a jurisdictional fee.

**FOR THESE  
REASONS, THE  
MARKETS COURT,**

Deciding by adversarial judgment,

The administration of justice proceeded in accordance with the law of June 15, 1935 on the use of language in court proceedings,

the request to reopen the debates originating from IAB Europe. Further

elaborating on the interlocutory judgment,

Annuls the Contested Decision only because of the procedural defects established in the interlocutory judgment and thus, in particular, insofar as the GBA, without more, finds that TC Strings are personal data within the meaning of Article 4(1) AVG and insofar as the GBA, without more, in the Contested Decision appoints itself as the leading supervisory authority.

Judged with full jurisdiction and after Prejudicial Judgment,

Dismisses IAB Europe's substantive grievances against the Contested Decision as unfounded except insofar as the Contested Decision finds that IAB Europe is acting as (joint) controller for the processing operations carried out entirely under the OpenRTB protocol (a finding that the Market Court does not endorse).

Notes that IAB Europe has committed infringements of the following provisions : Article 5(1)(a) AVG ; Article 6 AVG ; Article AVG ; Article 13 AVG ; Article 14 AVG ; Article 24 AVG ; Article 25 AVG ; Article 5(1)f) AVG ; Article 32 AVG ; Article 30 AVG ; Article 35 AVG ; Article 37 AVG, and this in the manner set forth in margin number 535 of the Contested Decision except to the extent that the Contested Decision finds that IAB Europe is acting as (joint) controller for the processing operations carried out entirely within the framework of the OpenRTB protocol.

Confirms the sanctions imposed on IAB Europe by the Contested Decision.

Order IAB Europe to pay the costs of the proceedings, including the basic indexed amount of the procedural indemnity of EUR 7 848,84 to the GBA.



Orders IAB Europe, pursuant to Article 269 of the Code of Registration, Mortgage and Court Registry Fees, to pay to the Belgian State, the FPS Finances, the sum of 400.00 for court fees for appeals, and to definitively take charge of the contribution of EUR 24.00 from the Budgetary Fund.

Thus stated and pronounced in open civil hearing of the <sup>ii</sup><sup>e</sup> Chamber A of the court of appeal in Brussels on May 14, 2025,

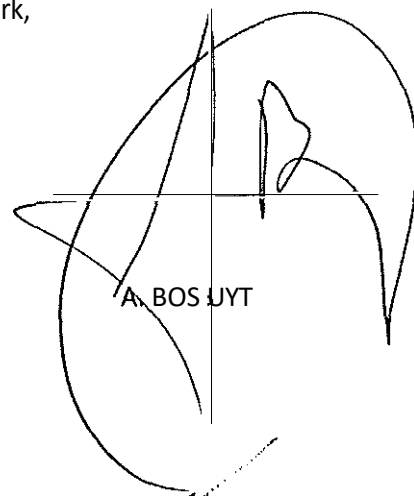
where were present :

A-M. WITTERS,  
C. TRANSFERS,  
A. BOSSUYT,  
S. THE  
COOMAN,


Counsel dd. Chairman,  
Counsel,  
Counselor,  
Clerk,




S. DE COOMAN



A. BOSSUYT



A-M. WITTERS



C. TRANSFER